Insurance Quarterly Legal and Regulatory Update

Period covered

1 July 2015 – 30 September 2015

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) European Commission proposes amendments to the Solvency II Delegated Regulation (2015/35) concerning the calculation of regulatory capital requirements for several categories of assets

On 30 September 2015, the European Commission adopted a Delegated Regulation amending the Solvency II Delegated Regulation concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings (the "**Amending Regulation**").

The aim of this Amending Regulation is to remove specific regulatory impediments to financing long term investment projects by insurers by amending the treatment of infrastructure investments, of European Long Term Investment Funds ("**ELTIFs**") and of equities traded on multilateral trading facilities under the Solvency II regime.

The revisions made include:

- a new concept of 'qualifying infrastructure investments': this type of investment presents better risk characteristics than other infrastructure investments and insurers will need to hold a lower level of capital against their investment in these infrastructure projects. 'Qualifying infrastructure investments' will form a distinct asset category under Solvency II and will benefit from an appropriate risk calibration;

- allowing investments in ELTIFs to benefit from lower capital charges under Solvency II. This brings them in line with investments in European Venture Capital Funds and European Social Entrepreneurship Funds, which benefit from the same equity capital charge as equities traded on regulated markets;

- extending the application of a transitional measure for equity investments to unlisted equities, so that insurers will not suddenly withdraw from equity investments; and

- granting equities traded on multilateral trading facilities (MTFs) the same capital charge as equities traded on regulated markets.

The European Parliament and the Council have up to three months to exercise their right of objection, with the possibility to extend this period for another period of three months at their initiative.

The proposed Amending Regulation can be accessed via the following link:

http://g8fip1kplyr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/EC-draft_Solvency-II-Delegated-Act.pdf

(ii) New EIOPA Solvency II DPM and XBRL taxonomy package published

On 28 September 2015, the EIOPA Solvency II DPM and XBRL taxonomy package was distributed to the stakeholders for review, before the publication of the official 2.0.1 on 21 October 2015.

This version incorporates the latest business changes on the Solvency II requirements, in particular:

- the Amendments in the outcome of the public consultation including all the specific amendments; and
- The additional validations incorporated in relation to the 2.0.0 version are included for consultation but not yet formally approved by EIOPA. This procedure will happen before the publication of 2.0.1.

This release also introduces two specific changes for which EIOPA seeks feedback from stakeholders in terms of the business and IT technical implementation:

- change of the data type from boolean to enumerated values for certain metrics; and
- all new validations (not included in 2.0.0).

Stakeholders should send any feedback on this release to EIOPA before 12 October 2015.

The release is available at the following link:

https://dev.eiopa.europa.eu/Taxonomy/Full/2.0.1RC/EIOPA_Solvency_II_2.0.1CR_Release_Notes.pdf

(iii) EIOPA publishes opinion on the group solvency calculation in the context of equivalence

On 25 September 2015, EIOPA published its opinion on group solvency calculation in the context of equivalence (the "**Opinion**"). The Opinion is of relevance for insurance or reinsurance groups that operate outside the European Economic Area **("EEA")** in third countries whose solvency regimes are considered to be equivalent to the Solvency II regime. It aims to provide consistency on the group supervisor's approach towards the third country's capital requirement to be used for the calculation of the solvency position of such groups and to ensure that the supervisory assessment of the availability of the third country undertaking's eligible own funds is carried out in a convergent manner.

Gabriel Bernardino, Chairman of EIOPA, remarked:

"*Supervisory convergence is an essential element in the implementation of Solvency II and is a high priority on EIOPA's agenda. With this Opinion, EIOPA intends to achieve a level playing field for the EU insurance groups by securing consistent practices by National Competent Authorities (**"NCAs"**).*

The Opinion is available via the following link:

https://eiopa.europa.eu/Publications/Opinions/Opinion%20on%20group%20solvency%20calculation%20in%20the%20context%20of%20equivalence.pdf

(iv) EIOPA publishes a speech on Solvency II

On 2 September 2015, the Chairman of EIOPA, Gabriel Bernardino gave a speech at the international conference "Solvency II: What Can Go Wrong?" in Slovenia. He outlined that Solvency II brings a new risk culture and enhanced consumer protection while using the latest international developments in risk-based supervision, actuarial science and risk management.

Mr Bernardino believes that insurers need to look at Solvency II as a tool to foster a true risk culture in the organisation and that insurance company boards need to make sure that the implementation of Solvency II is used as an opportunity to reinforce good governance in the organisation.

The speech outlines that insurers need to implement proper processes to deal with product design, development and marketing and identify and manage consumer risks. Mr Bernardino believes that this is a key feature to ensure that conduct risks are mitigated since inception.

Credible and independent supervision is a key important asset for the confidence of consumers and investors and in this regard, Mr Bernardino believes that it is in the insurance market's interest that the supervisory authorities have sufficient human and financial resources to ensure proper risk-based supervision.

The speech is available in full via the following link:
https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2015-09-02%20Solvency%20II%20Conference%20Slovenia.pdf

(v) Solvency II Matters Newsletters

During this quarter, the Central Bank of Ireland (the "**Central Bank**") published issues 20 and 21 of the Solvency II Matters Newsletter in July and September, respectively.

In the July edition, the Director of Insurance of the Central Bank, Sylvia Cronin, stated that when discussing Solvency II with board members and senior managers a number of themes keep re-emerging, including:

- finalising capital plans;
- refining the governance framework;
- the forward looking assessment of own risk ("**FLAOR**") process;
- internal model progress;
- reporting - Feedback from the test environment; and
- ensuring board members and senior management have an appropriate understanding of the Solvency II regime.

The newsletter referred to EIOPA and, in particular, its publication of its draft Implementation Technical Standards (**"ITS"**) and guidelines for Solvency II. The EIOPA publication covers areas from all three pillars and marks the completion of the regulatory framework.

The newsletter also reminds undertakings to keep a close watch on the finalised Solvency II reporting requirements.

The Online Reporting **("ONR")** test environment remains open until the end of 2015. A supported version of the test environment will re-open in Q4 2015 to allow undertakings to complete the testing of their reporting processes in advance of Q3 returns.

The July newsletter is accessible via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20July%202015.pdf

In the opening message of the September edition, Ms. Cronin, stated that, in preparation for the new system of supervision under Solvency II, the Insurance Directorate had been restructured. She stated that insurance undertakings should be considering the new supervisory regime and adapting. Specifically, the boards of undertakings should be moving beyond a compliance or implementation approach and should now be considering the long term or strategic implications that Solvency II will have for their business.

The new structural changes are as follows:

- A new supervision division has been established which will be responsible for all firms supervised by the directorate. The new division will be led by Kieran Murphy. It will see the amalgamation of the current General Insurance and Life Insurance divisions into a single supervisory division. Ms Cronin outlined that the head of supervision will adopt a sector approach with dedicated supervisory teams for each of the domestic life, domestic non-life, reinsurance and cross border sectors.

- A new advisory, analytics and actuarial division comprising these three new teams has been established and will be led by Mark Burke.

In order to supplement the on-going supervisory engagement and to assist progress reporting during the preparatory period, the Central Bank is conducting a survey on preparedness for Solvency II. The survey was issued to compliance officers on 16 September 2015 and will remain open until 30 October 2015.

The Central Bank has announced that, due to a number of regulatory changes, the following three different elements will be required from insurance companies in order to fulfil their future reporting requirements:

- quantitative reporting templates **("QRTs")** are required from all Irish undertakings subject to Solvency II. The new templates replace the regulatory reporting requirements that insurance companies are currently subject to;

- the Central Bank requires additional information from insurance companies to facilitate the translation of the supervisory based data into macro-economic statistical concepts;

- the Central Bank has introduced a number of national specific templates **("NSTs").** The prudential NSTs have been designed to capture information specific to the Irish market which is not captured in the EIOPA QRTs.

The newsletter also provided an update on the consultation on the Domestic Actuarial Regime and related Governance Requirements under Solvency II Consultation (CP92). The Feedback statement along with the final requirements will be published soon for information purposes. A new PCF position of Head of Actuarial Function (HoAF) will be introduced with effect from 1 January 2016 and the existing PCF positions of Chief Actuary and Signing Actuary will be removed with effect from 1 January 2016.

The September newsletter is available in full via the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20September%202015.pdf

(vi) EIOPA issues Set 2 draft ITS and Guidelines for Solvency II

On 6 July 2015, EIOPA published set 2 of its draft ITS and Guidelines for Solvency II. This second set covers different areas from all three Solvency II pillars (quantitative basis; qualitative requirements; reporting and disclosure).

As regards the publication, Gabriel Bernardino, Chairman of EIOPA stated:

"The publication of these Standards and Guidelines is a milestone for Solvency II and for EIOPA. It culminates a long and thorough process of development and public consultation. I want to thank all the different stakeholders that provided comments and engaged with EIOPA during the consultation phase, in particular the members of EIOPA's Insurance and Reinsurance Stakeholder Group. Their comments and suggestions contributed to a better balanced regulatory package."

The second set of draft ITS for Solvency II was submitted to the European Commission for endorsement and includes the following:

- Draft ITS on list of regional governments and local authorities;
- Draft ITS on index for the equity dampener;
- Draft ITS on currency shock for currencies pegged to the euro;
- Draft ITS on standard deviations for health insurance obligation subject to health risk equalisation systems;
- Draft ITS on procedures when assessing external credit assessments;
- Draft ITS on supervisory transparency and accountability;
- Draft ITS on capital add-ons;
- Draft ITS on submission of information to the supervisory authorities;
- Draft ITS on procedures, formats and templates of the solvency and financial condition report; and
- Draft ITS on exchange of information on a systematic basis with colleges.

The draft ITS on the procedures, formats and templates of the solvency and financial condition report and the draft ITS on templates for submission of information to the supervisory authorities were updated on 8 September 2015.

Where EIOPA submits draft ITS to the European Commission, the European Commission is required to immediately forward it to the European Parliament and the Council. Following the receipt of draft ITS, the European Commission has 3 months to decide whether to endorse it. The European Commission may extend this period by 1 month.

EIOPA should be notified of the endorsement, part-endorsement or non-endorsement of the draft ITS during the next quarter. The draft ITS listed above can be found at the following link:

https://eiopa.europa.eu/publications/technical-standards/draft-implementing-technical-standards-on-the-supervisory-approval-processes-for-solvency-ii

On 14 September 2015, EIOPA issued the second set of Guidelines under the Solvency II Directive (2009/138/EC) in the official languages of the EU which includes the following:

- Guidelines on Financial Stability Reporting;
- Guidelines on the Extension of the Recovery Period;
- Guidelines on the exchange of information within colleges;
- Guidelines on the implementation of the long term guarantee measures;
- Guidelines on the methods for determining the market shares for reporting;
- Guidelines on reporting and public disclosure;
- Guidelines on recognition and valuation of assets and liabilities other than technical provisions;
- Guidelines on System of Governance; and
- Guidelines on Own Risk Solvency Assessment (ORSA).

The aim of the Guidelines is to ensure the consistent application of EU law and to establish consistent, efficient and effective supervisory practices. EIOPA is of the opinion that the Guidelines are in line with Solvency II and the European Commission Delegated Regulation on Solvency II (Regulation 2015/35).

The Guidelines are addressed to the NCAs and the NCAs are required to confirm whether they comply or intend to comply with the Guidelines within two months of the issuance date. They will apply from 1 January 2016 and are available at the following link:

https://eiopa.europa.eu/publications/eiopa-guidelines

(vii) Update on Solvency II third country provisional equivalence

On 5 June 2015, the European Commission adopted its first third country equivalence decisions under Solvency II, granting Switzerland, Australia, Bermuda, Brazil, Canada, Mexico and the USA full or partial equivalence. While it was expected that the European Parliament would confirm these decisions quickly, on 16 July 2015, the European Parliament, by letter to the European Commissioner for Financial Stability, extended the time for scrutiny of the provisional equivalence decision by an additional three months i.e. until 7 December 2015. The European Parliament has given no reason for the extension of the scrutiny period.

On 14 July 2015, the European Council reached the conclusion that it would not object to the following European Commission's Solvency II third-country equivalence decisions:

- judging the solvency and prudential regime for insurance and reinsurance undertakings in force in Switzerland to be equivalent to the requirements of Articles 172(2), 227(4) and 260(3) of the Solvency II Directive (2009/138/EC); and

- solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries to be equivalent to the requirements of Article 227(4) of the Solvency II Directive (2009/138/EC);

The European Commission's decisions are delegated acts pursuant to Article 290 of the Treaty on the Functioning of the EU. The first set of equivalence decisions can now enter into force, unless the European Parliament objects.

On 12 September 2015, the European Parliament updated its procedure file on the third country equivalence of Switzerland under the Solvency II Directive (2009/138/EC). In its procedure file, the European Parliament outlined that it will not object to the European Commission's decision to grant full equivalence to the Swiss insurance regulatory regime in all three areas of Solvency II i.e. solvency calculation under Article 227, group supervision under Article 260 and reinsurance under Article 172.

The letter confirming the extension of Solvency II third country provisional equivalence can be found via the following link:

https://polcms.secure.europarl.europa.eu/cmsdata/upload/b0f9a0c6-a751-47ef-8880-0c6e9b6b7235/D34841%20-%20Hill%20Solvency%20II%20-%20extending%20the%20deadline%20for%20objection%20to%20a%20DA.pdf

The European Council's acceptance of Solvency II third country equivalent decisions can be accessed via the following link:

https://fsregulation.files.wordpress.com/2015/07/st10879-en15.pdf

The European Parliament's updated procedure on the third country equivalence of Switzerland under Solvency II can be accessed via the following link:

http://ec.europa.eu/finance/insurance/docs/solvency/international/delegated-act-c-2015-3754_en.pdf

The press release is available at the following link:

https://eiopa.europa.eu/Pages/News/EIOPA-issues-the-second-set-of-its-Solvency-II-Guidelines-in-the-official-EU-languages-.aspx

European Insurance and Occupational Pension Authority (**"EIOPA")**

(i) EIOPA publishes risk dashboard for Quarter 2 of 2015

On 16 September 2015, EIOPA published its risk dashboard for Quarter 2 2015. The dashboard indicates that the risk environment facing the insurance sector remains challenging and that market risk remains the most eminent risk due to highly volatile stock markets.

The dashboard indicates a slight improvement of macroeconomic conditions in light of strong uncertainty for financial markets in an overall fragile economy. The unemployment rate remained high compared with Quarter 1 2015.

According to the figures for Quarter 2, long term interest rates have increased very slightly and are still negatively affecting insurers' investment returns. However, sound underwriting techniques combined with cost cutting will have a positive effect on return on equity.

The dashboard outlines that some merger & acquisition activity has not resulted in notable capacity contractions offered by the combined entities. Total reinsurer capital grew moderately in Quarter 1 2015 by 1% and now accounts for USD 580bn, whilst alternative capital grew by 3% during this time to USD 66bn.

The risk dashboard for Quarter 2 is available at the following link:

https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-651-RiskDashboard_16092015.pdf

(ii) Chairman of EIOPA addresses ECON annual hearing

On 14 September 2015, the Chairman of EIOPA, Gabriel Bernardino gave a speech at the annual hearing of the ECON committee in Brussels.

Mr Bernardino outlined that new legislation is always more burdensome for smaller companies and therefore EIOPA have ensured that the proportionality principle is incorporated into all aspects of its work. EIOPA's goal in this regard is to make sure that Solvency II is implemented in a manner which would be proportionate to the nature, scale and complexity of companies' risk profiles. Mr Bernardino outlines that proportionality is embedded into the Solvency II templates.

EIOPA is also developing a Supervisory Handbook. The objective of the handbook is to build an array of good supervisory practices on the different areas of Solvency II. EIOPA expects and encourages National Supervisory Authorities (**"NSAs"**) to adequately implement these good practices in their supervisory processes.

EIOPA is developing a framework which anticipates emerging consumer issues, rather than just reacting to problems after they have occurred. Mr Bernardino states that this entails putting in place systematic monitoring to identify conduct risks as these develop, and proportionate processes for assessing those situations in which additional supervisory measures should be considered.

The speech is available at the following link:

https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2015-09-14%20Hearing%20at%20the%20ECON%20Committee.pdf

(iii) EIOPA invites applications for insurance and reinsurance stakeholder group

On 1 September 2015, EIOPA launched the call for expression of interest regarding the setting up of its Insurance and Reinsurance Stakeholder Group **("IRSG"),** following the expiration of their mandates on 3 April 2016.

The Stakeholder Groups are set up to help facilitate consultation with stakeholders in areas relevant to the tasks of EIOPA. Their members serve for a period of 2.5 years with the possibility to renew the mandate only once.

EIOPA will assess the eligibility of individual candidates against the following mandatory criteria:

- Experience; Candidates need to meet the conditions of belonging to one of the categories to become eligible. Further, a minimum of four years of relevant professional experience in the financial services sector is required for all Stakeholder Group membership categories. The professional experience and expertise of a candidate will be assessed against the category selected by the candidate in the application form;

- Availability; Candidates should be able to participate in meetings at least four times a year and commitment between meetings to deliver active contributions and carry out significant work to prepare the output of the IRSG (opinions, feedback statements, position papers, reports etc.);
- Command of English; Candidates must have sufficient English written and oral communication skills to enable the candidate to actively participate in the work of the Group.

The online Application form is available at:
https://ec.europa.eu/eusurvey/runner/EIOPAIRSGSStakeholderGroup2015

Applicants are obliged to keep EIOPA informed of any change in their professional situation or address, so that their application may be kept up to date. The deadline for applications is 8 November 2015. Applicants will receive an update on the status of their application no later than February 2016.

The paper is available via the following link:

https://eiopa.europa.eu/Publications/Administrative/EIOPA-15-535%20Call%20for%20expression%20of%20interest%20IRSG.PDF

(iv) EIOPA submits its technical advice on infrastructure investments risks

On 29 September 2015, EIOPA submitted its technical advice on the identification and calibration of infrastructure investment risk categories (the "**Technical Advice**") to the European Commission. The Technical Advice incorporated input received from the EIOPA consultation (CP-15/004) which concluded in August 2015 and the subsequent public hearing held in early September 2015. The Technical Advice proposes a more granular approach by advising to create a separate asset class under the Solvency II standard formula for investments in infrastructure projects. This new asset class seeks to capture high quality infrastructure, whilst recognising the complex and heterogeneous nature of such investments. The Technical Advice includes final advice on the following:

- Definitions of 'infrastructure assets' and 'infrastructure project entity;
- Calibrations for qualifying infrastructure investments;
- Requirements for all investments;
- Requirements for rated debt investments;
- Requirements for equities and unrated debt; and
- Risk management requirements.

In addition to the above final advice, the Technical Advice also provides a summary of the main stakeholders' comments and conclusions following the consultation (CP-15/004) and public hearing.

The Technical Advice can be accessed via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-BoS-15-223%20Final%20Report%20Advice%20infrastructure.pdf

(v) EIOPA issues note on the need for high quality public disclosure under Solvency II

On 10 July 2015 EIOPA published a note entitled "Need for high quality public disclosure: Solvency II's report on solvency and financial condition and the potential role of external audit". The purpose of this note is to stress the importance of high quality public information in order to fulfil the goals set out in Solvency II. EIOPA believes that the report on solvency and financial condition (the "**SFCR**") is an opportunity for insurance and reinsurance undertakings to engage in consistent, comparable and high quality communication with stakeholders on their solvency and financial condition. EIOPA is of the view that some of the main elements of the SFCR of all insurance and reinsurance undertakings could fall within the scope of the external audit.

To foster transparency, EIOPA will be evaluating the implementation of Solvency II public disclosure and, in case of insufficient quality of public disclosures; EIOPA will consider taking further regulatory actions. The note is available in full via the following link:

https://eiopa.europa.eu/Publications/Other%20Documents/EIOPA_high%20quality%20public%20disclosure_Solvency%20II.pdf

(vi) EIOPA progresses Solvency II risk free interest rate coding

On 15 July 2015, EIOPA launched a process in order to receive feedback on the test-stage version of the software for risk free interest rate ("**RFIR"**) coding, used in the preparatory phase of Solvency II. The published coding fully reflects the methodology set out in the RFIR technical documentation published on EIOPA's website. The coding has been reviewed by national supervisors and EIOPA now wishes to receive input from stakeholders (particularly users of technical computing language) to improve the coding and identify errors.

EIOPA has outlined that it is its intention to publish final revised coding and methodology before 1 January 2016. On 24 July 2015, EIOPA also published a user manual regarding carrying out calculations through the published RFIR coding, in order to provide guidance to stakeholders.

The publication is available at the following link:

https://eiopa.europa.eu/Pages/News/EIOPA-seeks-input-to-its-Solvency-II-risk-free-interest-rate-coding.aspx

(vii) EIOPA publishes speech on group supervision

On 7 July 2015, EIOPA published a speech given by the Chairman of EIOPA, Gabriel Bernardino on the challenges of group supervision**.**

Mr Bernardino states that the fast approaching implementation date of Solvency II will bring challenges for EIOPA to ensure that Solvency II is applied in a consistent manner throughout the EU, including for group supervision.

He goes on to state that EIOPA will put a strong emphasis on the promotion of supervisory convergence by contributing to improving the quality and consistency of national supervision and strengthening oversight of cross-border groups. In his speech, Mr Bernardino refers to EIOPA's Opinion on internal models which was published on 14 April 2015, where they recommend that EU supervisors accept internal model applications that take into account the European Commission Equivalence decisions. Mr Bernardino believes that the development of Solvency II has already been a catalyst for an international movement towards risk-based regulation and supervision, and that the Solvency II Equivalence process has been instrumental in this regard.

Mr Bernardino concludes by stating that the development of international standards has the potential to bring efficiency to a global scale. More efficient group supervision will benefit financial stability and safeguard consumer protection.

The speech is available in full via the following link:

https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2015-06-24%20ABIR.pdf

European Market Infrastructure Regulation ("EMIR")

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

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

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

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

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

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

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

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

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

https://www.esma.europa.eu/consultation/Consultation-Review-EMIR-Article-26-RTS-1532013

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

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

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

http://www.esma.europa.eu/news/ESMA-recommends-changes-EMIR-framework?t=326&o=home

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

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

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

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

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

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

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

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

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

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

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

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

http://ec.europa.eu/finance/financial-markets/derivatives/index_en.htm#150806

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

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

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

The Feedback Statement can be found at this link;

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?CPNumber=CP90

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

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

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

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

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

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

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

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

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

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

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

(viii) ISDA EMIR Classification Letter and accompanying Guidance Note

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

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

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

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

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

Responses to the Consultation can be found at this link;

http://ec.europa.eu/finance/consultations/2015/emir-revision/index_en.htm

Insurance Distribution Directive ("IDD") (formerly Insurance Mediation Directive 2 ("IMD2"))

(i) EU Council reaches agreement on IDD

On 22 July 2015, the EU Council announced that its Permanent Representatives Committee (Coreper) has approved the agreement reached with the Parliament on IDD. IDD will replace the existing Insurance Mediation Directive (Directive 2002/92/EC) and establish new rules on insurance distribution.

IDD aims to extend the scope of application to all distribution channels, increase policyholder protection generally, enhance the quality of information provided to consumers, and establish improved conduct of business rules for distributors of insurance and much needed conditions for fair competition between insurance distributors.

The IDD will now be submitted to the European Parliament for a vote at first reading before final adoption by the Council. Once adopted, Member States will have two years to transpose the directive into national law.

The final compromise text for IDD is available at the following link:

http://data.consilium.europa.eu/doc/document/ST-10747-2015-INIT/en/pdf

Packaged Retail Investment Products ("PRIPs")

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

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

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

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

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

The statement is available in full via the following link:

http://www.esma.europa.eu/system/files/jc_2015_056_statement_by_steven_maijoor_chair_esas_joint_committee_-_econ_scrutiny_session_on_priips_14092015.pdf

(ii) EIOPA delivers technical advice on product intervention powers

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

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

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

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

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

The full report is available via the following link:

https://eiopa.europa.eu/Publications/Opinions/Technical%20Advice%20on%20certain%20product%20intervention%20criteria(published).pdf

International Association of Insurance Supervisors ("IAIS")

(i) IAIS publishes August 2015 Newsletter

IAIS published its August 2015 newsletter (the "Newsletter") which focusses on a workshop in relation to compensation practices and details of upcoming meetings.

The Financial Stability Board **("FSB")** and IAIS jointly organised a workshop on compensation practices in the insurance sector. The aim of the workshop was to provide an overview of the current remuneration practices at insurers and to promote interaction and encourage the sharing of experiences and views on the implementation practices of the FSB Principles and Standards for Sound Compensation Practices **("P&S")** by insurers.

The Newsletter noted that participants discussed the applicability of the FSB P&S to the insurance sector. While the general perception was that the FSB principles were primarily developed to address compensation practices in the banking sector, participants noted that risk alignment of compensation is a common practice in the insurance industry. Industry participants expressed a view that compensation practices and the specific nature of business activities at insurers differ significantly from those of banks. In particular, insurers noted:

- insurer groups that do business internationally are subject to different regulatory regimes worldwide that make the implementation of global compensation policies very challenging; and

- insurers and their staff are traditionally more conservative and have longer career horizons than in banking. What motivates people in the insurance industry is often different than in banking. Insurance staff are more oriented toward career employment and short-term compensation is less of a driver.

Participants shared the view that effective risk management is key for insurers, and that compensation should not be considered in isolation but instead within the broader risk management framework.

IAIS has announced that it will hold a full-day open stakeholder meeting on 5 October 2015 in Basel.

The Newsletter is available in full via the following link:

http://iaisweb.org/index.cfm?event=getPage&nodeId=25303

(i) IAIS consults on conduct of business risk

On 1 July 2015, the IAIS published a draft issues paper (dated 17 June 2015) for consultation regarding conduct of business risk, focusing on retail customers, and its management.

The paper assesses the sources and impact of conduct of business risk and its place within risk management frameworks, and the mitigation of conduct of business risk by the entity concerned and its supervisor. The paper describes issues on the scope of, and approaches to, conduct of business-risk management that IAIS members may wish to consider when implementing Insurance Core Principle **("ICP")** 19 (Conduct of Business), ICP 18 (Intermediaries) and ICP 9 (Supervisory Review and Reporting).

The paper further considers consequences that could result from inadequate management of conduct of business risks that would be harmful not only to policyholders but also to insurers, intermediaries and the insurance sector as a whole. In this context, the paper discusses linkages between conduct of business risk and prudential risks.

The consultation period has now closed. A public discussion of the comments and proposed resolutions will be organised in early October.

The paper is available via the following link:

http://iaisweb.org/index.cfm?event=showPage&nodeId=50167

Prospectus Directive

(i) ESMA publishes final report on draft RTS on prospectus related issues under the Omnibus II Directive

On 1 July 2015, ESMA published its final report containing draft RTS on prospectus-related issues which ESMA is required to submit to the European Commission in accordance with the mandate contained in the Omnibus II Directive. The RTS make amendments to the aspects of the Prospectus Directive and Prospectus Regulation dealing with the way in which a prospectus is permitted to be published. The key points are as follows;

- when a prospectus is published on a website, it shall be easily accessible when entering the website;
- the prospectus must be in a searchable electronic format which cannot be modified;
- the prospectus must not contain hyperlinks (other than to the documents incorporated by reference);
- the prospectus must be downloadable and printable;

- a hyperlink to each document incorporated by reference shall be included in the prospectus;
- in respect of public offers of securities, measures shall be taken so as to avoid targeting residents of Member States or third countries where the public offer is not taking place;
- users must not be required to complete a registration process, accept disclaimers limiting legal liability or pay a fee in order to access a prospectus which has been published electronically;
- the method of publication selected from Article 14 of the Prospectus Directive in respect of a base prospectus does not have to be adopted in respect of each set of final terms issued under the base prospectus; and
- each competent authority shall publish on its website a list of each prospectus approved by the competent authority and how such prospectus can be obtained.

The RTS also include a general requirement that information disclosed in oral or written form regarding a public offer or admission to trading of securities shall not:

- contradict information contained in the prospectus;
- refer to information which contradicts the information contained in the prospectus;
- present a materially unbalanced view of information contained in the prospectus, including by way of omission or presentation of negative aspects of such information; and
- contain alternative financial performance measures concerning the issuer unless also contained in the prospectus.

The European Commission has three months to decide whether to endorse ESMA's draft RTS. The deadline for implementation of the Omnibus II Directive in member states is 1 January 2016.

The Final report can be accessed via the following link:

https://www.esma.europa.eu/system/files/esma-2015-1014_-_final_report_-_draft_rts_on_prospectus_related_issues_under_the_omnibus_ii_directive.pdf

Pensions Update

(i) Pensions Authority publishes note on pension transfers outside the State

On 11 August 2015, the Pensions Authority published a note on pension transfers outside the State. The purpose of this note is to:

- make members and contributors aware of some of the potential risks they should consider before making such a transfer such as the uncertainty of taxation consequences, dealing with unregulated intermediaries and the difficulty obtaining legal redress should it become necessary; and

- outline, for trustees and Personal Retirement Savings Account **("PRSA")** providers, the circumstances in which a member or contributor is allowed to make such a transfer. Trustees and PRSA providers should ensure that they comply with the relevant requirements under the Pensions Act 1990, the Occupational Pension Schemes and PRSA (Overseas Transfer Payments) Regulations 2003 and Revenue requirements.

The note is available at the following link:

http://www.pensionsauthority.ie/en/Regulation/Guidance_FAQs/Note_on_pension_transfers_outside_the_State.pdf

(ii) EIOPA publishes updated quantitative assessment Q&As

On 29 July 2015, EIOPA published its updated questions and answers for its occupational pensions stress test and quantitative assessment. The aim of the quantitative assessment is to collect evidence and to assess the appropriateness of EIOPA's proposals on the solvency of Institutions for Occupational Retirement Provision **("IORPs")** that were publicly consulted on in 2014.

The questions and answers can be accessed via the following link:

https://eiopa.europa.eu/Publications/Surveys/2015_IORPS%20Stress%20Test%20QA%20consolidated%20version_20150729.pdf

EIOPA's proposals can be accessed via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-14-040_CP_on_Further_Work_on_Solvency_of_IORPs.pdf

(iii) Speech by Chairman of EIOPA on European Pensions; regulatory achievements and the way forward

On 14 July 2015, EIOPA published a speech given by its Chairman Gabriel Bernardino on 24 June 2015. Mr Bernardino identifies a number of issues affecting pensions.

Mr Bernardino states that the protracted low interest rate environment forces pension funds to increase contributions and, in some cases, to lower the nominal value of pensions. Shifting the risks to employees by switching from defined benefit **("DB")** to defined contribution **("DC")** schemes has already become a global trend.

The speech goes on to state that despite the increasing mobility of the work force within the EU, there are very few cross-border pension funds because national prudential regimes are often tailored to the domestic situation and are simply unable to cope with pension arrangements in other EU countries.

Mr Bernardino outlines that the EU should build a robust and proportionate regulatory framework, which delivers on three fundamental objectives:

- strong governance: Pensions deserve to be governed by fit and proper persons, with the appropriate skills, experience and integrity. Conflicts of interest need to be identified and managed in order to make sure that board members act in the sole interest of members and beneficiaries. Strong risk management capabilities and robust internal controls are fundamental to deliver to pensioners the promises made or the expectations created;

- enhanced sustainability: It should be ensured that any pension scheme holds sufficient assets to fulfil its liabilities within a realistic valuation scenario;

- full transparency: Full disclosure of all costs, be it investment or transaction costs must be provided while also giving members and beneficiaries a full picture of the returns that they get on their pension products. Mr Bernardino believes that the best way to achieve this is in a simple and standardised manner, not inundating members and beneficiaries with hundreds of pages.

Mr Bernardino outlined the progress EIOPA is making on transparency in the pensions area. In 2012, EIOPA took its first step towards standardisation by suggesting to the European Commission the introduction of a standard information document, which would contain the most essential information for future and current scheme members. Mr Bernardino believes that such a document providing a clear picture of costs, charges, investment choices and performance will be a huge step towards more transparency and confidence in the area of occupational pensions, which in turn will put future scheme members in a position to take informed decisions.

The speech is available at the following link:

http://www.betterregulation.com/rulebooks.php?T=http://www.betterregulation.com/doc/7/31395

(iv) EIOPA published a consultation paper on the proposed features of a pan - European Personal Pension Product ("PEPP")

On 7 July 2015, EIOPA published a consultation paper (CP 15/006) containing its views on the desirability and proposed features of a standardised PEPP.

The overall objective of the proposal is to encourage EU citizens to save for an adequate retirement income by creating a simple, transparent, cost-effective and trustworthy product.

To achieve this objective, EIOPA suggests the creation of a harmonised legal framework for an internal European PEPP market. This framework would ensure a level playing field between all providers, remove existing barriers to cross-border business and, thus, facilitate cross-border offering of PEPPs to consumers. It would also facilitate a multi-pillar approach to pension saving.

EIOPA invites stakeholders and interested parties to provide their feedback on the proposals for the creation of the PEPP. The deadline for responses is 5 October 2015.

The consultation paper is available via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-006-Consultation-paper-Standardised-Pan-European-Personal-Pension-product.pdf

(v) EIOPA publishes market development report for 2015

On 9 July 2015, EIOPA published its ninth report on market developments with regard to occupational pensions and cross-border activities of IORP.

The report provides a comprehensive overview of the European occupational pension's landscape for the period June 2014 - June 2015. The results show that during the reporting period the number of active cross-border IORPs increased from 75 to 76. There are currently eight home countries for IORPs with cross-border activities in 17 Member States.

Out of the total IORPs' assets under management less than 1.5% are related to cross-border activities. This tiny proportion demonstrates that the EU needs to progress in promoting cross-border schemes in order to create a true single European market for occupational pensions.

Similarly to last year, the number of active cross-border IORPs is lower than the number of IORPs that completed the notification procedure to operate cross-border. One of the reasons for this is that it usually takes some time, even after the notification procedure is finalised, to actually start the cross-border activity.

Compared to last year, there is an increase by two authorised cross-border IORPs that finalised the notification procedure. Furthermore, the number of active cross-border IORPs increased with one additional cross-border IORP despite Belgian IORPs that launched cross-border activities and new cross-border IORPs operating from Germany, Ireland, Luxemburg and Malta.

The report is available in full via the following link:

https://eiopa.europa.eu/Publications/Reports/15.2_EIOPA_BoS_15-144_Market%20development%20report%202015.pdf

(vi) EIOPA publishes final report on good practices on individual transfers of occupational pension rights

On 2 July 2015, EIOPA published a report on good practices on individual transfers of occupational pension rights. The report summarises the findings of EIOPA regarding good practices on transferability of supplementary pension rights in answer to a call for advice from the European Commission.

This report concerns only individual transfers of vested occupational pension rights of an individual member in the case of the termination of the employment relationship. It does not distinguish between transfers made to a scheme managed by a different pension institution or by a scheme managed by the same institution.

EIOPA identified eight main impediments to (cross-border) transfers of supplementary pension rights, and a number of good practices to overcoming them. The good practices identified by EIOPA include, the establishment of voluntary agreements covering as many providers as possible, the layering of information and the use of appropriate tools to provide (additional) relevant information.

Commenting on the report, Gabriel Bernardino, Chairman of EIOPA stated:

"The increasing mobility of the workforce has made the issue of transferring pension rights nationally and across borders extremely relevant for many employees. EIOPA was asked by the Commission to explore measures for improving the transferability of vested pension

rights. With this Good Practices Report, we promote more transparency and inform future discussions on this topic".

The report is available in full via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-104_Final_Report_on_Pensions_Transferabity.pdf

Fitness and Probity

(i) Central Bank publishes updated FAQ document

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

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

The updated FAQs are available via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/FINAL%20Updated%20version%20of%20Published%20FAQ%20-%20FAP%20150402.pdf

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

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

The full guidance document is available at the following link:

https://www.centralbank.ie/regulation/processes/fandp/Documents/Individual%20Questionnaire%20User%20Manual.pdf

Central Bank of Ireland

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

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

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

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

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

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

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

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

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

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Update%20on%20the%20Central%20Bank%20Themed%20Inspections%20on%20Cyber-Security.pdf

(ii) Central Bank speech on regulatory perspectives on financial technologies

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

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

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

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

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

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

The speech is available in full via the following link:

http://www.centralbank.ie/press-area/speeches/Pages/GarethMurphyRegulatoryPerspectivesonF.aspx

(iii) Central Bank refers Case to Inquiry

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

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

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

http://www.centralbank.ie/press-area/press-releases%5CPages%5CCentralBankrefersINBSAdministrativeSanctionsProcedurecasetoInquiry.aspx

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

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

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

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

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

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

The consultation paper is available via the following link
http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP95%20Consultation%20Paper%20on%20Funding%20the%20Cost%20of%20Financial%20Regulation/CP95%20Consultation%20Paper%20on%20Funding%20the%20Cost%20of%20Financial%20Regulation.pdf

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

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

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

ESMA has been carrying out a programme of work on crowdfunding. In December 2014, it published an opinion and advice to clarify existing EU rules applicable to crowdfunding and identify regulatory gaps. In the course of its work, ESMA identified a need to clarify the extent of the risks involved in investment-based crowdfunding relating to the potential for money laundering and terrorist financing. The Q&A provides responses to questions raised by NCAs and draw on expert input from the Joint Committee's AML sub-committee.

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

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

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

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

(ii) FATF objectives for July 2015 - June 2016

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

- enhancing FATF and FSRB's efforts in countering terrorist financing;
- addressing the challenges faced by the fourth round of mutual evaluation;
- addressing capacity constraints;
- work prioritisation and strategic allocation of resources;

- mid-term review of FATF Mandate;
- reinforcing the global AML/CFT network;
- closer engagement with the private sector and civil society

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

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

(iii) MLD4 published in the Official Journal

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

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

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

Data Protection

(i) European Commission statement on data retention laws

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

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

The statement is available via the following link:

http://europa.eu/rapid/press-release_STATEMENT-15-5654_en.htm

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

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

The recommendations include:

- more independent, more authoritative supervision: The EU's data protection authorities should be ready to exercise their roles the moment the GDPR enters into force, with the European Data Protection Board fully operational as soon as the Regulation becomes applicable;

- effective safeguards, not procedures: The EDPS recommends a scalable approach which reduces documentation obligations on controllers into a single policy on how it will comply with the regulation taking into account the risks, with compliance demonstrated transparently, whether for transfers, contracts with processors or breach notifications;

- a better equilibrium between public interest and personal data protection: Those responsible must make the necessary arrangements to prevent personal information being used against the interest of the individual;

- trusting and empowering supervisory authorities: The EDPS recommends allowing supervisory authorities to issue guidance to data controllers and to develop their own internal rules of procedure;

A full list of the recommendations can be accessed via the following link:
https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2015/15-07-27_GDPR_Recommendations_EN.pdf

The Joint Committee (ESMA, EIOPA, EBA)

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

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

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

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

The Report can be accessed via the following link:

http://www.eba.europa.eu/documents/10180/950548/JC+2015+053+%28JC+Autumn+Risk+Report%29.pdf

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

On 3 July 2015, the Joint Committee of ESAs published a consultation paper on updated guidelines for the prudential assessment of acquisitions and increases of qualifying holdings in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm.

The main objective of the Guidelines is to provide the necessary legal certainty and clarity with regard to the assessment process contemplated in the sectoral Directives and Regulations[1], by:

- harmonising the conditions under which the proposed acquirer of a holding in a financial institution is required to notify its decision to the competent authority responsible for the prudential supervision of the target undertaking;

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

- defining a clear and transparent procedure for the prudential assessment by the competent authorities of the proposed acquisition or increase of a qualifying holding;

- specifying clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and

- ensuring that the proposed acquirer knows what information it will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition.

The Guidelines are intended to bring into line the supervisory practices in the financial sector throughout the EU and further clarify the position of proposed acquirers in relation to notifying the competent supervisory authorities that are responsible for the prudential supervision of the undertaking. Common procedures are defined to assist supervisory authorities in the assessment process as laid out in EU Legislation.
The ESAs will consider all comments received by 2 October 2015. The guidelines can be accessed via the following link:

https://www.eba.europa.eu/documents/10180/1131999/JC+CP+2015+003+%28CP+on+Joint+Guidelines+on+Qualifying+Holdings%29.pdf

European Systematic Risk Board

(i) ESRB publishes network analysis of the EU insurance sector

On 13 July 2015, the European Systematic Risk Board **("ESRB")** published a paper on the network of the twenty nine largest European insurance groups and their financial counterparties. The paper focuses on direct linkages between EU insurers and banks.

The paper outlines that, at a sectoral level, insurers and banks are interlinked through insurers' investments in bank debt. Insurers in the EU have assets in excess of 8 trillion euro and hence constitute an important part of the financial sector. The paper further provides that insurers are an important source of funding for banks, for example, 97% of the bank debt held by insurers has a maturity of more than two years.

Despite the strong linkages between insurers and banks at a sectoral level, the paper outlines that at firm level the exposures of insurers to banks are not concentrated. The implication of this is that supervisors should not only monitor firm level concentrations of exposures, but also sectorial level exposure concentrations.

The analysis is available via the following link:
https://www.esrb.europa.eu/pub/pdf/occasional/20150713_occasional_paper_7.pdf?7b5c9fd583f82d397ed1f361d52c386a

International Association of Deposit Insurers ("IADI")

(i) IADI publishes guidance papers on effective deposit insurance systems

On 13 July 2015, the IADI published two guidance papers on effective deposit insurance systems. The first paper relates to before the event funding of deposit insurance systems, with a view to ensuring that providers of such insurance have the financial capacity to respond when necessary. The paper provides that deposit insurers should establish a comprehensive funding framework based on guiding principle which would then set the direction for the funding approach and strategies. Deposit insurers funding objectives should be aligned to their mandates and powers, including the availability of and accessibility to, liquidity funding arrangements.

The second paper relates to possible use of multiple deposit insurance organisations (i.e. more than one deposit insurance provider). The paper outlines that where it is not possible to merge a jurisdiction's multiple deposit insurance organizations, multiple deposit insurance organizations should work to:

- harmonize their coverage levels for institutions that are competing for deposits;
- eliminate opportunities for regulatory arbitrage; be part of formal cooperation frameworks; and
- actively engage the public, so that depositors know at which organizations their savings are insured.

The guidance papers are available via the following links:

http://www.iadi.org/docs/IADI_Enhanced_Guidance_on_Ex-Ante_Funding_June_2015.pdf

http://www.iadi.org/docs/IADI_Enhanced_Guidance_on_Multiple_Deposit_Insurance_Org_June_2015.pdf

Companies Act 2014

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

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

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

Consumer Protection (Regulation of Credit Servicing Firms) Act 2015

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

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

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

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

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

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

http://www.dilloneustace.ie/download/1/Publications/Banking%20and%20Capital%20Markets/The%20Consumer%20Protection%20(Regulation%20of%20Credit%20Servicing%20Firms)%20Bill%202015.pdf

Regulation of Lobbying Act 2015

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

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

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

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

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

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

The Standards Commission will be responsible for the regulation of lobbying. There is a positive obligation on lobbyists to register under the Act and to provide returns to the Standards Commission every four months. The first returns are due to be submitted to the Register by 21

January 2016, i.e., registration is mandatory from this date if you have engaged in lobbying during the period 1 September 2015 to 31 December 2015.

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

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

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Regulation%20of%20Lobbying%20Act%202015.pdf

Irish Taxation Update

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

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

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

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

Dillon Eustace
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