Insurance Quarterly Legal and Regulatory Update

Period covered:
1 July 2016 – 30 September 2016

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) European Commission requests technical advice from EIOPA on the review of the Solvency II Delegated Regulation

On 18 July 2016, the European Commission issued a formal request to EIOPA for technical advice on the review of specific items in the Solvency II Delegated Regulation ((EU) 2015/35) (the "**Call for Advice**").

The Call for Advice follows on from the European Commission's public consultation on the EU regulatory framework for financial services which identified the following areas of the Solvency II framework as requiring further work:

- ***Proportionate and simplified application of the requirements***: Even though there are numerous provisions on proportionality in the Solvency II Delegated Regulation, the public consultation indicated that further work could be done to ensure that all requirements are proportionate to risk.

- ***Removal of unintended technical inconsistencies:*** The review due to take place in 2018 of the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement with the standard formula could address significant weaknesses experienced by stakeholders such as the non-life risk calibrations. The review could also consider more consistency across sectoral rules to the extent possible, taking into account the unavoidable differences between the business models of the financial institutions. EIOPA is invited to provide information on current use of certain existing simplifications and suggest improvements and refinements to such simplifications.

- ***Removal of unjustified constraints to financing:*** It was highlighted in the public consultation that the Solvency II framework may create unintended barriers to long-term investment. The review provides an opportunity to consider additional initiatives in the context of the Capital Markets Union which means additional work to identify investments creating growth and jobs and offering sufficient transparency and credit quality to justify improved risk sensitiveness in the standard formula.

In the Call for Advice, the Commission requests technical advice from EIOPA on topics relating to proportionate and simplified application of the requirements and the removal of unintended technical inconsistencies only. The European Commission is not requesting

technical advice from EIOPA on the removal of unjustified constraints to financing at this stage but may at a later date.

A review of specific items of the Solvency II standard formula is expected before December 2018 and in preparation of this review, the European Commission requests EIOPA to provide its final technical advice, including a cost-benefit analysis, by 31 October 2017.

A copy of the Call for Advice can be found at the following link:

http://ec.europa.eu/finance/insurance/docs/news/call-for-advice-to-eiopa_en.pdf

(ii) Solvency II Commission Implementing Regulation (EU) (2016/1376) published in the Official Journal of the EU

On 18 August 2016, Commission Implementing Regulation (EU) (2016/1376) of 8 August 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2016 until 29 September 2016 in accordance with the Solvency II Directive (2009/138/EC) (the "**Implementing Regulation**") was published in the Official Journal of the EU.

For prudential reasons, it is necessary for (re)insurance companies to use the same technical information for the calculation of technical provisions and basic own funds for reporting irrespective of the date on which they report to their competent authorities. The Implementing Regulation provides that (re)insurance companies must use the technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments referred to in Article 1 (2) of the Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 30 June 2016 until 29 September 2016.

In order to ensure uniform conditions for the calculation of technical provisions and basic own funds by (re)insurance undertakings, the Implementing Regulation states in the recitals that this technical information should be laid down for every reference date.

The Implementing Regulation, which entered into force on 19 August 2016, applies from 30 June 2016 and is binding in its entirety and directly applicable in all Member States.

This Implementing Regulation can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.224.01.0001.01.ENG

(iii) Central Bank issues Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications

On 18 August 2016, the Central Bank published its Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications (the "**Guideline**"). The Guideline addresses the format of the directors' certifications required from Solvency II undertakings.

By means of a notice served on relevant undertakings by Section 25 of the Central Bank Act 1997, undertakings are required to submit a compliance statement to the Central Bank certifying that they materially comply with the obligations and requirements set out in the Insurance Acts and both national and European Solvency II legislation and requirements. The Guideline sets out the format of the Directors' Compliance Statement for those undertakings subject to Solvency II, which includes the Directors' compliance statement on the Corporate Governance Requirements.

The Guideline also provides the format for the Directors' Accuracy Certificates required to be annexed to the annual quantitative reports, the regular supervisory report (or annual summary thereof) and the Own Risk and Solvency Assessment (the "**ORSA**") as required by Regulation 36 of the Solvency II Regulations.

The Guideline applies in relation to financial reporting years ending in 2016 onwards.

The Directors' Compliance Statement should be submitted to the Central Bank no later than the date by which the undertaking's annual Quantitative Reporting Templates ("**QRTs**") and regular supervisory report ("**RSR**") are due.

The Directors' Accuracy Certificates in respect of the annual QRTs, the RSR and the ORSA report should be submitted to the Central Bank at the same time as the report to which the directors' accuracy certification applies.

The Central Bank noted in its Insurance Quarterly Newsletter that for those directors' certifications which are due to be submitted in 2016, the undertakings are expected to submit them in hard copy format to the relevant supervisory team in the Central Bank. For those directors' certifications which are due to be submitted from 2017 onwards, these should be submitted via the ONR reporting system and the submission of a hard copy will not be required.

The Guideline does not apply to those (re)insurance undertakings that are not subject to Solvency II. Those (re)insurance undertakings are required to continue to comply with the Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings, and Reinsurance Undertakings – Compliance Statements which was issued in 2014.

A copy of the Guideline can be found at the following link;

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Guideline%20for%20Solvency%20II%20Undertakings%20on%20Directors%20Certifications%202016.pdf

The Central Bank communication on this Guideline can be found at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Pages/Communications.aspx

(iv) Solvency II Commission Implementing Regulation (EU) 2016/1630 on the procedures for the application of the transitional measure for the equity risk sub-module published in the Official Journal of the EU

On 10 September 2016, Commission Implementing Regulation (EU) (2016/1630) of 9 September 2016, laying down implementing technical standards with regard to the procedures for the application of the transitional measures for the equity risk sub-module in accordance with Solvency II was published in the Official Journal of the EU (the **"Commission Implementing Regulation**").

In order to apply the transitional measure in respect of calculating the equity risk sub-module as set out in Article 308b(13) of the Solvency II Directive 2009 and Regulation 118(2) of Irish Solvency II Regulations, (re)insurance undertakings must keep a record of certain equities (type 1 equities that were purchased on or before 1 January 2016 which are not subject to the duration-based equity risk pursuant to Article 304 of the Solvency II Directive) and the dates of their purchase.

In the case of those equities held within a collective investment undertaking or other investment packaged as a fund where the look-through approach is not possible, (re)insurance undertakings are only required to keep a record of the units or shares of the collective investment undertaking or other investment packaged as a fund to which Article 173 of the Solvency II Delegated Regulation (2015/35 (EU)) applies and the dates of their purchase.

Those records must be updated each time the (re)insurance undertaking calculates the Solvency Capital Requirement using the transitional measure set out in Article 308b(13) of the Solvency II Directive.

(Re)insurance undertakings must provide the supervisory authority with all the information necessary related to those equities, units and shares, and with documentary evidence of the date of purchase, upon request.

Where (re)insurance undertakings sell equities, units or shares as referred to above as bought on or before 1 January 2016 and then purchase equities, units or shares of the same kind after 1 January 2016, (re)insurance undertakings shall ensure that the remaining equities, units or shares bought on or before 1 January 2016 can be identified.

The Commission Implementing Regulation entered into force on 30 September 2016.

A copy of the Commission Implementing Regulation can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1630&from=EN

(v) Central Bank publishes second Insurance Quarterly Newsletter

On 21 September 2016, the Central Bank published the second edition of its Insurance Quarterly Newsletter (the "**Newsletter**") which aims to give industry updates on supervision, reporting, policy and EU and International affairs.

The Newsletter provides an update on the enhanced engagement model for low impact insurance companies. In the first half of 2016, the supervisory teams carried out on-site inspections of low impact undertakings focusing on Corporate Governance, Risk Management, Internal Controls, Claims and Reserving processes, Reinsurance and other risk mitigating techniques, Annual and Quarterly Return processes and ORSA reports. Some of the common findings of the Central Bank include the following:

- In general, the relevant outsourcing agreements were not fully compliant with Solvency II;
- The risks identified by undertakings were not subjected to a sufficiently wide range of stress tests or scenario analyses in order to provide an adequate basis for assessment of the overall solvency needs as part of the ORSA;
- Risk management policies and sub policies were not adequately detailed to reflect the complexity of the undertakings and the Risk Appetite Statements did not adequately reflect undertakings' appetite for risk; and
- Boards of low impact (re)insurance undertakings should review compliance with Solvency II and take corrective actions in these areas, if necessary, while taking into account the nature, scale and complexity of their businesses.

Other supervisory updates include notice of the new appointment of Nuala Crimmins to the role of Head of Division - Insurance Supervision. Also, the Insurance Directorate is hosting an industry briefing event for insurance undertakings on 26 October 2016.

The Central Bank provided clarification on the submission dates for the bi-annual NST returns (NST.03 – NST.07). The submission dates for both the half yearly bi-annual return and end of year bi-annual return will be the same as the quarterly return submission dates i.e. for undertakings, eight weeks after reporting date for 2016 returns, reducing to seven weeks for 2017 returns. The Central Bank also noted in the Newsletter that it is planning another version of the NST taxonomy (version 1.1.0) at the beginning of Quarter 4.

For more information on other updates, the Newsletter can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/The%20Insurance%20Quarterly%20-%20Sept%202016%20v1.0.pdf

(vi) EIOPA updates Solvency II Questions and Answers ("Q&A")

During Quarter 3, EIOPA published updated Solvency II Q&As on the following:

- Answers to questions on the Final report on the ITS on procedures, formats and templates of the solvency and financial condition report (CP-14-055) (updated 22 September 2016);
- Answers to questions on Final report on the ITS on the templates for the submission of information to the supervisory authorities (CP-14-052) (updated 22 September 2016);
- Guidelines on reporting for financial stability purposes (updated 1 September 2016);
- Guidelines on recognition and valuation of assets and liabilities other than technical provisions (updated 1 September 2016);
- Answers to questions on Guidelines on valuation of technical provisions (updated 4 August 2016);
- Answers to questions on Guidelines on reporting and public disclosure (updated 5 August 2016);
- Answers to questions on Risk-free interest rate – Matching adjustment (updated 20 July 2016); and
- Answers to questions on the Guidelines on the supervision of branches of third-country insurance undertakings (updated 19 July 2016).

The EIOPA Q&As can be accessed via the following link:

https://eiopa.europa.eu/regulation-supervision/q-a-on-regulation

(vii) Central Bank publishes Feedback Statement on Consultation Paper on External Audit of Solvency II Regulatory Returns/Public Disclosures (CP 104)

On 28 September 2016, the Central Bank published its Feedback Statement to Consultation Paper 104 on External Audit of Solvency II Regulatory Returns/Public Disclosures (the "**Feedback Statement**").

The consultation (CP 104), which was launched on 1 June 2016, set out the Central Bank's proposal regarding the external audit of elements of Solvency II regulatory returns/public disclosures. Under Solvency II insurance and reinsurance undertakings are required to prepare a Solvency and Financial Condition Report ("**SFCR**") on an annual basis. The SFCR will consist of both quantitative and qualitative information and will be publicly disclosed. Regulation 37 of the Solvency II Regulations enables the Central Bank to require that elements of the quantitative information submitted by the insurance and reinsurance undertakings be audited, and that the audit report should include a reasonable assurance opinion on the elements of the SFCR relevant to the balance sheet, own funds and capital requirements (the "**Requirement**").

The consultation on the Requirement closed on 29 July 2016 and the Central Bank received 11 responses. The Central Bank noted that the responses it received were largely supportive of the Requirement and has taken on board observations and suggestions to enhance the proposals made in the consultation paper where it is considered that they provide greater clarity as to the intent of the Requirement. Such clarifications include the following:

- The Solvency Capital Requirement ("**SCR**") and own funds QRTs are in scope only for Solvency II groups for which the Central Bank is the Group Supervisor (at the level referred to in Regulation 216(3)(a) and (b) of the Solvency II Regulations);

- Regulation 37 specifies that it is "elements of the quantitative information" that are subject to audit. The Central Bank notes that in order to provide a reasonable assurance on the quantitative elements, qualitative aspects of the SFCR will also need to be considered and the Requirement has been reworded to clarify this;

- The Requirement has been amended such that the SCR and Minimum Capital Requirement ("**MCR**") will not be in scope for undertakings with approved internal and partial internal models;

- In respect of the use of the work of an expert, auditors may rely on the work of an expert in accordance with applicable auditing standards and the Technical Guidance for auditors providing reasonable assurance opinions in accordance with Regulation 37;

- The Central Bank notes that Chartered Accountants Ireland, following publication of the Feedback Statement finalising the Requirement, will work to develop Technical Guidance for auditors providing reasonable assurance opinions in accordance with Regulation 37;

- The Central Bank confirms that the QRT relating to long term guarantees is not in scope for the purposes of this engagement and the inconsistent reference has been removed from the Requirement;

- The exact wording of the audit opinion to be provided will be included in the Technical Guidance for auditors providing reasonable assurance opinions in accordance with Regulation 37. Chartered Accountants Ireland will consult with the Central Bank as this is developed;

- Auditors should determine the appropriate audit procedures in respect of opening balances in accordance with applicable auditing standards and the Technical Guidance for auditors providing reasonable assurance opinions in accordance with Regulation 37; and

- Where an auditor qualifies their audit opinion, the insurance undertaking should notify the Central Bank prior to publication of the SFCR to determine the most appropriate course of action, mindful of the public disclosure requirements arising under Solvency II.

In addition to the above, a new section has been inserted into the Requirement in respect of approvals, waivers and supervisory determinations to provide clarity in respect of matters that are subject to supervisory determination or where Central Bank may have approved the use of transitional measures. This new section provides that the auditor is not expected to express an opinion on the validity of an approval, waiver or other supervisory determination. Instead, the auditor must obtain evidence that an approval, waiver or supervisory determination is in place (for example obtaining a copy of correspondence from the Central Bank) and, once obtained, approvals, waivers and supervisory determinations provided by the Central Bank should be considered as part of the framework against which the audit opinion is being given.

The Requirement will apply to all (re)insurance undertakings regulated by the Central Bank falling within the scope of Solvency II and for periods ending on or after 31 December 2016.

The Feedback Statement, along with individual responses to the consultation, can be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/search.aspx?CPNumber=CP104

European Insurance and Occupational Pension Authority ("EIOPA")

(i) EIOPA launches thematic review on market conduct among insurers operating in unit-linked life insurance market

On 5 July 2016, EIOPA issued a press release stating that it was launching an EU-wide thematic review of market conduct among insurance companies operating in the unit-linked life insurance market (the "**Thematic Review**"). The Thematic Review is part of EIOPA's strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision.

The Thematic Review aims to identify potential sources of consumer detriment stemming from the relationships between insurers and providers of asset management services with a particular focus on how remuneration paid by asset managers to insurers could influence their choice of investments and how this choice could impact policyholders.

The Thematic Review focused on three key issues:

- The existence and characteristics of monetary incentives and remuneration;
- How insurance undertakings address conflicts of interest; and
- How insurance undertakings structure unit-linked life insurance products.

The Thematic Review aims to cover 60% of each national market in terms of both gross written premiums and assets of unit-linked fund. EIOPA conducted the Thematic Review in close co-operation with national competent authorities ("**NCAs**"), which were responsible for identifying participating insurance companies, gathering the relevant data and information in their national market and serving as a primary contact point for insurance companies in case of questions. EIOPA will prepare the final in-depth analysis of the results.

Participating insurance companies were expected to report back by September 2016. EIOPA will disclose the results of the Thematic Review in early 2017.

The press release on the Thematic Review can be accessed via the following link:

https://eiopa.europa.eu/Pages/News/EIOPA-to-launch-EU-wide-thematic-review-on-market-conduct.aspx

(ii) EIOPA signs up to the International Association of Insurance Supervisors ("IAIS") multilateral memorandum of understanding

On 28 July 2016, EIOPA and IAIS published a joint press release announcing that EIOPA became a signatory to the IAIS' multilateral memorandum of understanding ("**MMoU**").

The MMoU is an international supervisory cooperation and information exchange agreement with the aim of promoting financial stability and sound supervision of cross-border insurance operations for the benefit and protection of consumers. It enables supervisors to exchange relevant information with and provide assistance to other signatories.

There are now 56 signatories to the MMoU. All signatories are subject to review and approval by an independent team of IAIS members and must adhere to the minimum standards set out in the MMoU.

The Chairman of EIOPA stated that the agreement strengthens EIOPA's ability to work co-operatively with other supervisory bodies and to monitor large cross-border insurers.

A copy of the joint press release can be found in full at the following:

https://eiopa.europa.eu/Publications/Press%20Releases/EIOPA%20Joins%20IAIS%20MMoU.pdf

(iii) EIOPA speech on Solvency II: Looking back to look ahead – First experience with Solvency II implementation and the way forward

On 6 September 2016, Dr. Manuela Zweimuller of EIOPA gave a speech on Solvency II implementation, titled "Solvency II: Looking back to look ahead – First experience with Solvency II implementation and the way forward", at the Slovenian Insurance conference (the "**Speech**").

In the Speech, EIOPA acknowledged the huge efforts made by industry and supervisors to get ready for Solvency II and the need to continue these efforts to get the full benefit from the new regime.

Giving an overview of the fundamental principles of Solvency II, EIOPA noted that although not the perfect regime, Solvency II is a very good starting point and is a huge step forward towards a similar level of policyholder protection for the single European Market.

In the Speech, EIOPA highlighted supervisory convergence as one of the main challenges of Solvency II. Given the current differences of supervisory cultures and practices between Member States, EIOPA noted that a consistent and convergent application of the new risk based regulatory framework will not happen overnight. However, EIOPA noted the key role it will play in the process of achieving supervisory convergence using a number of tools including the comprehensive information system it is building based on data collected under Solvency II, a supervisory handbook that it is developing, the monthly publication of the risk free interest rate term structures, ongoing monitoring of internal models, the colleges of supervisors which facilitate the exchange of information amongst supervisory authorities and the use of the EIOPA peer reviews to compare and assess the quality of implementation of Solvency II and corresponding supervisory practices.

EIOPA went on to outline the key areas of focus for the future. Given the challenging macro-economic environment, EIOPA is conducting another insurance stress test which concentrates on two major risks: the prolonged low yield environment and the so-called "double-hit" scenario, when the assets' value decreases while the value of liabilities is sustained.

In respect of Solvency II implementation, some of the key areas of focus going forward include the following:

- The benefits of the ORSA;
- The use of transitional measures;
- The necessity for dialogue between supervisors and industry;
- Fostering the understanding of the regime's disclosure element to inform the market;
- Enhancing policy holder protection within and beyond prudential supervision;
- Special attention to companies' processes related to the manufacturing and distribution of products;

- The review of Solvency II to include yearly review of long term guarantee measures and review of the SCR standard formula; and

- Macro-prudential supervision as an integral element of the Solvency II regime.

The transcript of the Speech can be viewed in full here:

https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2016-09-06%20Slovenian%2025th%20Annual%20Conference%20Ljubljana-Final-clean.pdf

European Commission

(i) European Commission publishes summary of contributions to Green Paper on retail financial services

On 14 July 2016, the European Commission published a summary of the responses it received to its December 2015 Green Paper on retail financial services (the "**Consultation**"). The objective of the Consultation was to improve choice, transparency and competition in the area of retail financial services and to facilitate cross-border supplies of these services, so that financial firms can make the most of the economies of scale in a truly integrated EU market.

Key messages that the European Commission has drawn from the Consultation include:

- Many individual consumers were interested in easier access to simple financial products. They saw most need for change in the areas of currency exchange transactions and certain digital financial services (such as on-line financial advice);

- Consumer organisations often referred to "simple products" as most appropriate for future cross-border sales. They believed consumers need simpler, better products but not necessarily more products. They also emphasised the importance of consumer trust and some expressed doubt as to whether consumers could trust sufficiently financial service providers in cross-border situations;

- Firms noted insufficient demand from consumers who would simply not want to purchase products when sold cross-border. Many emphasised that they do not provide services cross-border as they do not see a business case for it. They also raised concerns that they face specific obstacles when trying to offer services cross-border, many of which were outlined in the Consultation;

- A number of respondents called for the European Commission to ensure that there is a level playing field between different types of market players, between firms in different Member States and between EU and non-EU firms. They believed that different regulatory requirements were a key reason why the level playing field does not currently exist.

The European Commission stated that it is working on a follow-up initiative, which might take the form of an action plan.

A copy of the European Commission's summary of the responses received to the Consultation together with an annex providing a more detailed summary of the responses may be accessed via the following link:

http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_en.htm

(ii) EU and US establish joint financial regulatory forum

On 19 July 2016, the European Commission announced, in a joint statement with the US Treasury, that the Financial Markets Regulatory Dialogue has been succeeded by the Joint EU-US Financial Regulatory Forum (the "**Forum**").

The aim of the Forum is to act as a platform for enabling regulatory co-operation, with the objective of improving transparency, reducing uncertainty, identifying potential cross-border implementation issues, working towards avoiding regulatory arbitrage and promoting domestic implementation consistent with international standards.

The Forum will meet twice a year, although there may be additional technical meetings and calls, as appropriate, between the biannual meetings. The Commissioner for financial stability, financial services and the capital market union and the US Treasury Secretary will meet once each year to discuss financial regulatory matters and to review the functioning of the Forum.

A copy of the joint statement is available at the following link:

http://ec.europa.eu/finance/docs/160718-fmrd-enhancement_en.pdf

(iii) Joint statement on US-EU negotiations on insurance and reinsurance measures

On 27 September 2016, the European Commission published a joint statement with the United States on US-EU negotiations for a future bilateral agreement relating to prudential insurance and reinsurance measures. The statement follows a meeting held in Washington in September 2016 and notes that both sides continue to discuss in good faith matters relating to group supervision and exchange of confidential information between US

and EU supervisors and reinsurance supervision, including collateral. The statement notes that the representatives made progress on key issues, and identified next steps toward a possible completion of negotiations in the near future.

The full joint statement can be viewed at the following link:

http://ec.europa.eu/finance/insurance/docs/solvency/international/160927-us-eu-joint-statement_en.pdf

International Association of Insurance Supervisors ("IAIS")

(i) IAIS launches second consultation on the risk-based global insurance capital standard Version 1.0

On 19 July 2016, the IAIS launched its 2016 consultation on the Risk-based Global Insurance Capital Standard ("**ICS**") (the "**2016 Consultation**"). The IAIS committed to developing a risk-based global ICS after its announcement in 2013 that a sound capital and supervisory framework for the insurance sector is essential for supporting financial stability and protecting policyholders.

The 2016 Consultation is the second IAIS consultation in a multi-year process to develop the ICS. The first consultation was issued in 2014 and the IAIS responses to comments received on this first consultation were published in four tranches, with the last tranche being published in March 2016. Field testing exercises, which are also informing the development of the ICS, were completed in 2014 and 2015 and the latest one began in May 2016. IAIS view the public consultation process and field testing as critical to the evidence-based policy development of the ICS.

The aim of the 2016 Consultation is to seek stakeholder feedback on three key components of the ICS Version 1.0 for confidential reporting purposes which include:

- Valuation methodologies (Market-adjusted valuation (MAV) and GAAP (Generally Accepted Accounting Principles with Adjustments (GAAP Plus);
- Qualifying capital resources; and
- A standard method for determining the ICS capital requirement.

ICS Version 1.0 for confidential reporting is scheduled for adoption in mid-2017. ICS Version 2.0 is planned for adoption in late 2019. The ICS will be part of ComFrame which is the Common Framework for the supervision of internationally active insurance groups.

Once finalised, the ICS will be a measure of capital adequacy for Internationally Active Insurance Groups ("**IAIGs**") and Global Systemically Important Insurers ("**G-SIIs**"). It will constitute the minimum standard to be achieved and one which the supervisors represented in the IAIS will implement or propose to implement taking into account specific market circumstances in their respective jurisdictions. The ICS will not be a legal entity Prescribed Capital Standard ("**PCR**") but will serve as a minimum standard for a group PCR.

The IAIS is seeking feedback on the 2016 Consultation by 19 October 2016. More information on the 2016 Consultation can be found at the following link:

http://www.iaisweb.org/index.cfm?event=showPage&nodeId=61185

(ii) IAIS publishes resolution of comments document on the consultation on analytical framework for non-traditional non-insurance activities and products ("NTNI")

On 20 July 2016, the IAIS published its responses to the comments received on the consultation on an analytical framework for NTNI activities and products (the "**NTNI Responses Document**").

With the aim of clarifying the NTNI concept and its consistent approach across IAIS projects and across jurisdictions, the public consultation, which closed in January 2016, sought feedback from members and stakeholders on the proposed analytical framework and the preliminary conclusions from the analysis, including how insurance products and features from across jurisdictions should be classified.

The NTNI Responses Document sets out comments that were submitted by IAIS members (including the China Insurance Regulatory Commission and the National Association of Insurance Commissioners) and other stakeholders. Due to the large number of responses, the stakeholder comments are presented on a thematic basis. The NTNI Responses Document also sets out the IAIS' response to those comments.

The NTNI Responses Document can be accessed via the following link:

http://www.iaisweb.org/page/consultations/closed-consultations/ntni

(iii) IAIS publishes resolution of comments document on the consultation on the updated G-SII assessment methodology

On 20 July 2016, the IAIS published its responses to the comments received on its consultation on proposed updates to its assessment methodology for global systemically important insurers ("**G-SIIs**") (the "**G-SII Responses Document**").

The public consultation, which closed in January 2016, sought feedback on the proposed revisions to the 2013 Methodology for G-SIIs and related issues.

The G-SII Responses Document sets out comments that were submitted by IAIS members (including EIOPA, the China Insurance Regulatory Commission and the National Association of Insurance Commissioners) and other stakeholders. Due to the large number of responses, the stakeholder comments are presented on a thematic basis. The G-SII Responses Document also sets out the IAIS' response to those comments.

The G-SII Responses Document can be accessed via the following link:

http://www.iaisweb.org/page/consultations/closed-consultations/g-sii-methodology//file/61646/g-sii-methodology-cd-resolution-of-comments-public

(iv) IAIS paper on cyber risk in the insurance sector

On 12 August 2016, the IAIS published its issues paper on the impact of cyber risk to the insurance sector (the "**Issues Paper**").The objective of this Issues Paper is to raise awareness for insurers and supervisors of the challenges presented by cyber risk, including current and anticipated supervisory approaches for addressing these risks. The Issues Paper is intended to be primarily descriptive and is not meant to create supervisory expectations. The IAIS sought feedback on a draft of this paper between April and May 2016.

Given the growth in cyber risks, concern over cybersecurity is growing across all sectors of the global economy. Insurers, regardless of size, or lines of business, collect, store and share large amounts of private and confidential data and therefore cybersecurity incidents can harm insurers by disrupting operations, compromising the protection of commercial and personal data and undermining confidence in the sector.

The Issues Paper provides the background to the cyber risk landscape, outlines cyber threats to the insurance sector, describes current best practices for cyber resilience, identifies examples of cybercrime in the insurance sector and explores related regulatory and supervisory issues and challenges such as the applicability of insurance core principles to cybersecurity and the supervisory response to cyber risk.

The Issues Paper focuses on cyber risk to the insurance sector and mitigation of such risks but does not cover other IT security risks, cyber insurance or risks arising from cybersecurity incidents involving supervisors. The Issues Paper also provides a summary of responses to the IAIS survey on the subject of cybercrime conducted by the Financial Crime Task Force ("**FCTF**") in January to February 2015. The responses to this survey, a summary of which is set out in Annex I of the Issues Paper, provided input to this Issues Paper.

The Issues Paper can be found at the following link:

http://www.iaisweb.org/page/supervisory-material/issues-papers/file/61857/issues-paper-on-cyber-risk-to-the-insurance-sector

(v) IAIS publishes update on IAIS assessment program

On 23 August 2016, the IAIS published the August edition of its newsletter, providing updates on stakeholder engagements, upcoming IAIS meetings and seminars, committee activities and other items of interest to readers.

The newsletter also provides an update on the IAIS' self-assessment and peer review programme ("**SAPR**") which gives members an overview of their compliance with each standard of the assessed insurance core principles ("**ICPs**") and results in an aggregate report.

These aggregate reports offer a platform for capturing and analysing some of the key issues and challenges faced by members with observing and implementing the ICPs and provide clear guidance to IAIS standard setting and implementation work. Since its launch, a large number of members have participated in these assessments of the SAPR and the aggregate reports offer a global and regional picture of ICP implementation.

The reviews for over half of the ICPs have been completed or are underway with the remaining ICPs scheduled for completion by year-end 2018.

The newsletter can be found on the IAIS website at the following link:

http://www.iaisweb.org/page/news/newsletter/file/62072/iais-newsletter-august

Insurance Europe

(i) Transatlantic Insurance Industry continues to see need for financial services regulatory co-operation in the Transatlantic Trade and Investment Partnership ("TTIP")

On 6 July 2016, the bodies representing the life and non-life insurance sectors in the United States and the European Union, namely Insurance Europe, the American Insurance Association, and the American Council of Life Insurers (the "**Transatlantic Insurance Industry**"), restated their support for the full inclusion of insurance and other financial services in the TTIP in time for the 14th negotiating round of the TTIP which took place in Brussels from 11-15 July 2016.

The benefit of transatlantic trade and investment is clear for both European and American insurance entities as it stimulates economic activity, job creation and competitiveness and the Transatlantic Insurance Industry recognises that amongst other things, the TTIP can increase insurance trade and investment and facilitate regulatory dialogue between the United States and the European Union.

The Transatlantic Insurance Industry continues to support the Financial Markets Regulatory Dialogue and bilateral Insurance Dialogue Project as well as the recently launched negotiations by the US government on an international "covered agreement" on specific insurance prudential matters. However, it believes that the TTIP provides the opportunity to create enduring structures for broad, ongoing regulatory cooperation that builds upon these other existing regulatory dialogues.

The next round of negotiations will most likely take place in the autumn.

For more information on the TTIP see the In Focus: TTIP section on the European Commission's website at the following link:

http://ec.europa.eu/trade/policy/in-focus/ttip/

(ii) Insurance Europe proposed format for standardised insurance product information document under the Insurance Distribution Directive

On 12 July 2016, Insurance Europe published a position paper on its proposed format for the standardised insurance product information document ("**IPID**") for non-life insurance products required under the Insurance Distribution Directive ((EU) 2016/97) ("**IDD**").

Under the IDD, insurance distributors must provide consumers with the relevant information about non-life insurance products in a comprehensible form prior to the conclusion of an insurance contract. Article 20(5) requires this information to be provided by way of a standardised IPID on paper or on another durable medium.

In order to support the work of EIOPA and the European Commission in developing the implementing technical standards ("**ITS**") on a standardised presentation format of the IPID, Insurance Europe developed its own IPID mock-up for motor insurance and home contents insurance together with explanatory documents. Insurance Europe advises that the mock-ups meet all of the necessary IDD information requirements, and are intended to achieve a solution that is consumer-friendly and that works in both paper and digital formats. For example, Insurance Europe considers that the use of icons in the IPID will help to draw the consumer's attention to the different sections to identify relevant information quickly and make the IPID simple and easy to read.

Insurance Europe also published a document sharing its views on the key factors that should be taken into account in the development of an effective and customer-friendly format for the IPID.

EIOPA published its consultation on the draft ITS on a standardised presentation format of the IPID on 1 August 2016 (See the Insurance Distribution Directive section for more information). Commenting on this on 2 August 2016, Insurance Europe highlighted the importance of getting the format right so that the IPID truly benefits consumers and noted the development of its own proposed format for the IPID to provide input to the work by EIOPA and the European Commission.

EIOPA is required to submit the final draft ITS to the European Commission by 23 February 2017.

Insurance Europe's position paper and its IPID mock-ups are available at the following link**:**

http://www.insuranceeurope.eu/insurance-product-information-document-mock-ups#

A copy of Insurance Europe's press release on the publication of EIOPA IPID consultation is available at the following link:

http://www.insuranceeurope.eu/comment-publication-eiopa-ipid-consultation

(iii) Insurance Europe participates in public hearing on limitation periods for road traffic accidents

On 12 July 2016, Nicolas Jeanmart of Insurance Europe participated at the European Parliament's public hearing on limitation periods for road traffic accidents. The hearing addressed difficulties for victims of road traffic accidents resulting from the existence of different rules on limitation or prescription periods in the EU.

Insurance Europe's perspective on potential difficulties arising from different limitation periods remains unchanged from previous discussions (the most recent being in 2012).

Insurance Europe noted that difficulties for victims of road traffic accidents can either be the result of limitation periods in some Member States being considered too short to allow access to redress in cross-border claims or they may be linked to a perceived lack of information about the rules in different states.

Insurance Europe noted the scale of the problem as being important to finding a proportionate solution and quoted a study by the European Commission in 2009 which found such cases as being "relatively rare". Jeanmart, quoting the European

Commission's 2009 study, stated during his address at the hearing that "the most appropriate solutions would be those that do not lead to overhauling the whole legal framework of Member States".

Two previously suggested solutions - providing information on the differences in limitation periods, or harmonising certain aspects of the rules on limitation periods, when they apply to cross-border accidents – were raised, with Jeanmart noting the provision of information as Insurance Europe's favoured option. Insurance Europe believe that harmonisation is not a proportionate solution to the issue at hand because in practice, to harmonise the rules would be extremely complex and would almost inevitably imply interfering with Member State's competence for civil tort law.

For a full transcript of Jeanmart's speech at the public hearing see the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Nicolas%20Jeanmart%20speech%20on%20limitation%20periods%20for%20road%20traffic%20accidents.pdf

(iv) Insurance Europe issues response to EIOPA consultation on the methodology to derive the UFR

On 18 July 2016, Insurance Europe issued its response to EIOPA's consultation on the methodology to derive the Ultimate Forward Rate ("**UFR**") and its implementation (the "**Response**").

In the Response, Insurance Europe comments that the UFR is an extremely important factor in the determination of the Solvency II discount and that the need and appropriateness of changing the UFR at this stage is challengeable and questionable. As the UFR is a long term parameter, a few years of low interest rates does not yet justify a change in long term expectations to trigger a change in the UFR in the same way that a few years of higher rates would not justify an increase. Insurance Europe believes that finalisation of the methodology and any changes to UFR should be incorporated into the Solvency II review processes and not done as a stand-alone change and presents a number of arguments for this including the following:

- The Solvency II framework requires the UFR to be stable over time. The UFR should only change as a result of fundamental changes in long-term expectations according to Article 47 in the Solvency II Delegated Regulation;

- The actual discount rates used to value liabilities for Solvency II, with the current UFR of 4.2% (for the Euro and a wide range of other currencies), are already low (far lower than the UFR) and will already tend to be conservative relative to the actual cash flow yield from asset;

- The current framework has other additional layers of buffers in the form of the risk margin which Solvency II requires to be included in the calculation of technical provisions but are not actually needed to pay claims;

- There are dependencies with other elements of the Solvency II framework such as the risk margin that need to be considered before changing the UFR; and

- Lowering the UFR values now can have unintended consequences on customers because it can push insurers unnecessarily towards sub-optimal investment strategies, and on the economy because it may encourage pro-cyclical behaviours.

The Response contains Insurance Europe's comments on EIOPA proposals on the methodology to derive the UFR which outline elements of the methodology that it supports and also notes flaws in the proposed methodology and how these could be addressed.

Insurance Europe also believes that when the UFR is eventually reviewed, an impact analysis should be undertaken before any methodology and implementation planning is finalised.

Insurance Europe's press release on the Response can be accessed here:

http://www.insuranceeurope.eu/rushed-changes-ufr-unnecessary-and-could-threaten-investment-returns-policyholders

The Response can be accessed via the following link:

https://eiopa.europa.eu/Publications/Comments/Insurance%20Europe_27-07-2016.pdf

(v) Insurance Europe comments on the publication of the ICS consultation

On 19 July 2016, Insurance Europe issued a press statement on the publication of the IAIS consultation on the Insurance Capital Standard ("**ICS**") (the "**Press Statement**"). In the Press Statement, Insurance Europe noted its support for the ICS and its aim of ensuring comparable and high levels of policyholder protection across international jurisdictions. However, in order to deliver these aims Insurance Europe highlighted several issues that need to be addressed including:

- Whether or not the timeline for having a useable and agreed framework by 2019 and implemented by 2020, is realistic;

- Concerns over the lack of strong political support, in particular for the implementation of the ICS; and

- The need for IAIS to provide clarification early in the process that local regimes, which are consistent with the ICS framework, can be recognised as a suitable implementation for it. Insurance Europe notes that requiring entities to comply with two frameworks would not be acceptable and neither would burdening them with further costs to move to a similar but different framework, using Solvency II as an example of a very strong risk-based regime that provides very high levels of policyholder protection.

To view Insurance Europe's Press Statement in full, see the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Comment%20on%20publication%20of%20ICS%20consultation.pdf

(vi) Insurance Europe publishes response to European Commission consultation on a proposed EU services passport for the single market

On 26 July 2016, Insurance Europe published its response to the Commission consultation on a proposed EU services passport for the single market along with an addendum to the response (together known as the "**Response**").

Within the Response, Insurance Europe emphasised its support for the facilitation of insurance for cross-border services, acknowledging the benefits of a single market and supporting the freedom of movement and the freedom of establishment of services that brings opportunities to European businesses and professional service providers. However, Insurance Europe questioned the ability of a services passport to ensure a service provider is able to satisfy cross-border insurance obligations.

Insurance Europe states that rather than help facilitate cross-border movement, harmonisation of insurance conditions or activities would render the provision of professional indemnity insurance more complicated and limit the freedom to design products, thus impeding product diversity.

Insurance Europe also noted that it remains unclear what role insurers would play with respect to the development and delivery of the services passport. Insurance Europe highlights in the Response that different insurance needs between Member States often stem from national liability legislation, national requirements for professionals and local costs that influence damage claim amounts, noting it is unlikely that the passport would enable a service provider to bypass these differences.

Insurance Europe recommended that the provision of, and better access to, information regarding professional requirements in other Member States is the best way to support service providers wishing to offer their services cross-border. Insurance Europe notes that this awareness could be increased through better use of the Points of Single Contact

already provided for in the EU Services Directive as opposed to harmonisation methods outlined in the European Commission's Consultation.

A copy of Insurance Europe's response to the consultation can be found here:

http://insuranceeurope.eu/sites/default/files/attachments/Response%20to%20European%20Commission%20consultation%20on%20a%20services%20passport.pdf

A copy of the addendum to Insurance Europe's response to EC Services Passport Consultation can be found at the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Addendum%20to%20response%20to%20European%20Commission%20services%20passport%20consultation.pdf

(vii) Insurance Europe comments on the draft IAIS application paper on approaches to supervising the conduct of intermediaries

On 11 August 2016, Insurance Europe published its comments on the draft IAIS application paper on approaches to supervising the conduct of intermediaries (the "**Comments**") The Comments, set out in table format, list the individual paragraphs within the draft IAIS paper on which Insurance Europe has comments and suggestions.

In the Comments, Insurance Europe questions the usefulness of supervisors banning certain types of online activities where they consider that they do not have enough control over them (paragraph 24 of the draft IAIS application paper), noting that many online activities are accessible across borders without being subject to the direct control of the host country, for example, in the European Union where online providers may benefit from the freedom to provide services. In respect of determining licensing categories (paragraph 41 of the draft IAIS application paper), Insurance Europe questions if such a distinction should be made not only between brokers and agents, but also within the different categories of agents and notes that licensing and requirements for registering should be adaptable in order to guarantee transparency towards customers. When determining what is "in good time" (paragraph 158 of the draft IAIS application paper), Insurance Europe suggests that the wishes of the customer are also taken into consideration.

The full table of Insurance Europe's comments on the draft IAIS application paper can be found at the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Comments%20on%20draft%20IAIS%20application%20paper%20on%20approaches%20to%20supervising%20the%20conduct%20of%20intermediaries.pdf

(viii) Insurance Europe response to the Organisation for Economic Co-Operation and Development ("OECD") consultation on approaches to address Base Erosion and Profit Shifting ("BEPS") involving interest in the banking and insurance sectors

On 1 September 2016, Insurance Europe published its response to the OECD discussion draft on approaches to address BEPS involving interest in the banking and insurance sectors (the "**Response**").

In the Response, Insurance Europe stated their support for the aims of the OECD BEPS Action Plan to address weaknesses in the international tax environment, and also for the OECD reflections on how interest limitation rules can be designed to take into account the particularities of the financial sector in general and of insurance in particular.

Insurance Europe welcomes the acknowledgement by the OECD that "excessive leverage in an insurance company has not been identified as a key risk at this point in them and so it is anticipated that in the majority of cases, this BEPS risk will be low". Insurance Europe also agrees with the acknowledgment by the OECD that existing regulation acts as a safeguard for any insurance BEPS risk. Therefore, Insurance Europe believes that general rules should apply to insurers, and entire insurance groups, when relevant. Where tax authorities are concerned about specific insurance structures from a BEPs perspective, Insurance Europe notes that targeted rules can complement the general interest limitation rules and would be the most effective way to address these issues but, otherwise applying special rules regardless of the very low BEPS risk in insurance would result in inappropriate restrictions.

In the Response Insurance Europe also commented on the OECD's proposal of a fixed ratio rule to apply to local groups but not insurance companies that are part of this group and the OECD's suggestion that this is done by excluding insurance related revenue and debt. Although noting that the OECD is right that excluding banks and insurance companies would have the same effect as applying a fixed ratio rule to these entities, Insurance Europe does not agree with how the OECD proposes to implement this rule. Insurance Europe believes the OECD's proposal is flawed as it would lead to interest income and operating profit of insurers being excluded whereas the full amount of interest expense on debt issued at holding level would remain under the scope of the rules. Non-insurance companies (which include holdings) that are part of an insurance group could be faced with an unintended interest limitation.

The Response, which includes a summary of Insurance Europe's comments and the answers to specific consultation questions, can be viewed in full at the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Response%20to%20OECD%20consultation%20on%20approaches%20to%20address%20BEPS%20involving%20interest%20in%20banking%20and%20insurance%20sectors.pdf

Organisation for Economic Co-Operation and Development ("OECD")

(i) OECD consults on revising guidelines on insurer governance

On 12 July 2016, the OECD launched a public consultation on its draft recommendation on guidelines on insurer governance (the "**Draft Recommendation**"). The Draft Recommendation revises the guidelines published in May 2011 to reflect the revisions to the Principles on Corporate Governance launched by the G20 and OECD in 2015, which they complement.

The guidelines in the Draft Recommendation are applicable to any insurer licenced to underwrite life, non-life and reinsurance policies and are organised around four main sections:

- Governance structure;
- Internal governance mechanisms;
- Groups and conglomerates; and
- Stakeholder protection.

The guidelines are non-binding. They aim to provide guidance and serve as a reference point for policymakers, insurers and other relevant stakeholders in OECD and non-OECD countries.

The consultation closed on 29 August 2016 and the OECD intends to publish a summary of comments received. The OECD will consider these comments when preparing the final version of the Draft Recommendation.

A copy of the Draft Recommendation can be found at the following link:

http://www.oecd.org/daf/fin/insurance/insurer-governance-consultation.pdf

Packaged Retail Insurance-Based Investment Products ("PRIIPS")

(i) European Commission adopts Delegated Regulation supplementing PRIIPs Regulation regarding product intervention

On 14 July 2016, the European Commission adopted a Delegated Regulation supplementing the Regulation on key information documents for packaged retail and

insurance-based investment products (Regulation 1286/2014) ("**PRIIPs KID Regulation**") with regard to product intervention (the "**Delegated Regulation**").

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

The Delegated Regulation sets out the criteria and factors to be taken into account by both the NCAs (Article 2 of the Delegated Regulation) and EIOPA (Article 1 of the Delegated Regulation) when intending to use their product intervention powers in the event of significant investor protection concerns and a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the EU financial system or, respectively, of at least one Member State. As far as EIOPA is concerned, the criteria and factors set out in the Delegated Regulation are exhaustive.

The Delegated Regulation is subject to the scrutiny of Council of the EU and the European Parliament. If neither of them objects, it will enter into force 20 days after its publication in the Official Journal of the EU and will apply from 31 December 2016.

A copy of the Delegated Regulation can be found here:

http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4369-EN-F1-1.PDF

(ii) PRIIPs Update: European Parliament votes to reject the European Commission's proposed Regulatory Technical Standards

On 14 September 2016, the European Parliament voted to reject the PRIIPs Regulatory Technical Standards (the "**RTS**") which were endorsed by the European Commission on 30 June 2016. This follows a vote by the European Parliament's Economic and Monetary Committee ("**ECON**") on 1 September 2016 to support a motion to reject the RTS.

The RTS, which supplement the EU regulation on key information documents for packaged retail and insurance-based investment products (the "**PRIIPs KID Regulation**"), specify the presentation, content and underlying methodology of the key investor document ("**KID**") that will have to be provided to retail investors when they buy certain investment products.

In rejecting the RTS, the European Parliament raised concerns over certain aspects of the KID including, amongst others, that the proposed methodology for the calculation of future performance scenarios contains flaws, that there is a lack of clarity relating to the treatment of multi-option products, and that a lack of detailed guidance in the RTS on the

'comprehension alert' creates a serious risk of inconsistent implementation of this element in the KID across the single market.

In its resolution of 14 September 2016, the European Parliament calls on the European Commission to submit new RTS which take account of the European Parliament's concerns and also calls on the European Commission to consider a proposal postponing the application date of the PRIIPs KID Regulation to ensure a smooth implementation of the requirements set out in both the PRIIPs KID Regulation and the RTS, and avoid the application of the PRIIPs KID Regulation without the RTS being in force in advance.

On 20 September 2016, the Council of the EU issued a statement also calling on the European Commission to consider postponing the application date of the PRIIPS Regulation by 12 months in order to provide sufficient time to clarify open questions and reach the goals of the PRIIPs Regulation.

However, to date, no formal decision has been made on the application date and it therefore currently remains unchanged. The PRIIPs Regulation is binding in its entirety across all Member States so unless the application date is formally amended, the application date of 31 December 2016 continues to apply across all Member States, including Ireland. However, given that the European Commission will have to submit new RTS to address the European Parliament's concerns and both the European Parliament and the Council of the EU have called for a postponement of the application date, a delay is becoming more likely.

The European Parliament's provisional edition of its resolution of 14 September can be accessed via the following link:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0347+0+DOC+PDF+V0//EN

The statement from the Council of the EU dated 20 September 2016 can be accessed via the following link:

http://data.consilium.europa.eu/doc/document/ST-12160-2016-ADD-1-REV-3/en/pdf

Insurance Distribution Directive ("IDD")

(i) EIOPA publishes consultation paper on its draft technical advice to the European Commission on possible delegated acts concerning the IDD

On 4 July 2016, EIOPA published a Consultation Paper on its draft technical advice to the European Commission on possible delegated acts concerning the IDD (the "**Consultation Paper**").

This public consultation follows the European Commission's formal "Request for Advice" to EIOPA on 24 February 2016 to provide technical advice on the content of the delegated acts under IDD.

The high level objectives of the draft technical advice include the following:

- To ensure that insurance products meet the needs of consumers throughout the product lifecycle and, thus, prevent or mitigate mis-selling;
- To ensure that different third party payments such as commissions, do not have a detrimental impact on the quality of services to the customer; and
- To ensure that insurers and intermediaries sell to individual customers, products that are suitable (for advised sales) or appropriate (for non-advised sales).

In the Consultation paper, EIOPA seeks feedback on the policy proposals with regard to the following areas:

- ***Product oversight and governance (Art 25(2) of IDD):*** The policy proposals aim to ensure that the interests of the customers are taken into consideration throughout the life cycle of the product and EIOPA considers it important to define in more detail, the arrangements regarding internal processes, functions and strategies for designing and bringing products to the market, monitoring and reviewing them over their life cycle. The arrangements differ depending on the question whether the regulated entities are acting as a manufacturer and/or distributor of insurance products. EIOPA's Preparatory Guidelines on Product Oversight & Governance are included in the draft technical advice along with new policy proposals to elaborate on issues which have not been addressed by EIOPA's previous policy work.
- ***Conflicts of interest (Article 27 and 28(4) of IDD):*** EIOPA has been invited to provide technical advice on organisational and administrative arrangements designed to identify, prevent, manage and disclose conflicts of interest that arise in the course of carrying out any insurance distribution activities. The policy proposals aim to

ensure that distribution activities are carried out in accordance with the best interests of customers and that customers buy insurance products which are suitable and appropriate for the individual customer.

- ***Inducements (Art 29(2) of IDD):*** The policy proposals aim to ensure that any detrimental impact, stemming from the payment of inducements on the quality of the service provided to the customers is excluded from the outset. EIOPA concluded that the European Commission is seeking advice in relation to fees or commissions as well as non-monetary benefits paid by or to third parties only, but not in relation to internal payments (e.g. fees paid by the customer or internal payments to employees of insurance distributors). The proposals contain list of inducements which are considered by EIOPA to have a high risk of leading to a detrimental impact on the quality of the service to the customer.

- ***Assessment of suitability and appropriateness and reporting to customers (Art 30(5) of IDD):*** EIOPA's policy proposals specifying the suitability/appropriateness assessment ensure that the insurance intermediary or insurance undertaking obtains all relevant information necessary to assess where a specific insurance-based investment product is suitable or appropriate for a specific customer.

EIOPA invites all interested stakeholders to provide feedback by 3 October 2016.

EIOPA will consider all responses to the Consultation Paper and intends to submit its technical advice to the European Commission in February 2017.

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-16-006_Consultation_Paper_on_IDD_delegated_acts.pdf

(ii) EIOPA publishes Consultation Paper on proposed ITS for IPID under the IDD

On 1 August 2016, EIOPA published its Consultation Paper (CP 16-007) on the proposal for Implementing Technical Standards ("**ITS**") on a standardised presentation format of the Insurance Product Information Document ("**IPID**") under the IDD (the "**Consultation Paper**").

The development of the IPID is a significant project within the overall work of EIOPA on the IDD. Under Article 20(9) of IDD, EIOPA is required to develop draft ITS regarding a standardised presentation format of the IPID, specifying the details of the presentation of the information required by Article 20(8) of IDD.

The Consultation Paper consults on the following topics:

- ***Single Standardised presentation format***: Although EIOPA recognises the challenge in developing a standardised presentation format that will cover all available non-life insurance products, it also recognises the benefits for consumers if the same format is used and therefore EIOPA believes that the information requirements as set out in the IDD are such that it will be possible to provide a meaningful product information document using only one presentation format and sets out the proposed template in Annex I of the Consultation Paper.

- ***Use of visual aids in IPID:*** EIOPA believes that the presence of icons and symbols in the IPID will assist the user in locating and understanding different parts of an IPID reproduced in black and white. A high level of standardisation is important to support cross border comparability between products and cross border business in the context of an EU single market and therefore EIOPA is proposing that the icons contained in the draft ITS (set out in Annex 1 to the Consultation Paper) should be used in preparing IPIDs.

- ***Length of IPID:*** The IDD states that the IPID must be a "short and stand-alone document". EIOPA believes that it should be possible to clearly set out the main features of a non-life product in an IPID on no more than two sides of a page. EIOPA is proposing that the font type and size should also be standardised.

- ***The IPID in digital format***: Taking into consideration the different computer systems of manufacturers and the different media, EIOPA believes that many elements of the standardised presentation format can be applied across different media, but that there are some aspects in which it might not be possible to match the default version, which is the printed version. In such cases, EIOPA believes that it will be acceptable to display the IPID in a “medium-friendly” format provided the fundamental aspects of the standardised presentation format are observed.

- ***Anticipated impact on industry***: In the Consultation Paper, EIOPA is dealing only with the question of a standardised presentation format. EIOPA believes that the impact on industry will in the main take the form of one off costs related to the initial changeover to using the standardised format in the IPID. The costs, benefits and work associated with the content of the IPID are not relevant this Consultation Paper.

- ***Type of customer covered by the IPID:*** EIOPA decided to focus primarily on consumers in the retail market when developing the standardised presentation format for the IPID.

EIOPA is seeking feedback on this Consultation Paper from stakeholders by 24 October 2016 to facilitate the process of finalising the development of the draft ITS which are set out in Section 3 of the Consultation Paper.

The Consultation Paper and templates for comments can be accessed via the following link:

https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-16-007-Consultation-Paper-on-the-proposal-for-the-Implementing-Technical-Standards-on-a-standardised-presentation-.aspx

(iii) EIOPA launches online survey on its empowerment to develop guidelines under Article 30(7) of the IDD

On 5 September 2016, EIOPA launched an online survey on its empowerment to develop guidelines under Article 30(7) of IDD which relates to the assessment of insurance-based investment products ("**IBIP**") that incorporate a structure which makes it difficult for the customer to understand the risks involved.

EIOPA's final guidelines are required by 23 August 2017. This online survey is the first step by EIOPA to seek the views and input of stakeholders on the scope of the guidelines and the types of IBIPs that may be relevant for this scope.

EIOPA acknowledged that there are a number of ongoing public consultations on the IDD, including on the technical advice on possible delegated acts and noted its appreciation for any input stakeholders could provide at this stage.

The survey closed on 25 September 2016. EIOPA intends to publish the contributions received on its website in due course.

EIOPA will continue to involve stakeholders at various stages during the development of the guidelines. In particular, once draft policy proposals have been prepared, EIOPA will launch a public consultation on the proposals.

More information on the online survey is available at the following link:

https://eiopa.europa.eu/Pages/News/EIOPA-launches-online-survey-on-the-empowerment-to-develop-Guidelines-in-Article-30(7)-of-the-Insurance-Distribution-Direct.aspx

European Markets Infrastructure Regulation ("EMIR")

(i) ESMA publishes consultation on proposed delay to clearing obligation for financial counterparties with a limited volume of activity

On 13 July 2016, ESMA published a consultation paper proposing to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a

limited volume of derivatives activity under EMIR. ESMA proposes to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity i.e. those ones classified in Category 3 under EMIR Delegated Regulations.

The consultation closed on 5 September 2016 and ESMA will consider all responses received with a view to publishing a final report by the end of 2016.

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

https://www.esma.europa.eu/sites/default/files/library/2016-1125_cp_on_clearing_obligation_for_financial_counterparties.pdf

(ii) Clearing obligation for Interest Rate Swaps in Norwegian Krone, Polish Zloty, and Swedish Krona

On 20 July 2016, Commission Delegated Regulation ((EU) 2016/1178) (the "**Delegated Regulation**") supplementing EMIR as regards regulatory technical standards on the clearing obligation was published in the Official Journal of the EU. The Delegated Regulation imposes mandatory clearing obligations to interest rate swaps denominated in Norwegian Krone, Polish Zloty and Swedish Krona. This is the third Delegated Regulation which has been published in the Official Journal of the EU.

On 21 July 2016, a corrigendum to the text of the Delegated Regulation was published in the Official Journal of the EU. The corrigendum amends several dates in the Delegated Regulation, which was published on 20 July 2016.

The Delegated Regulation came into force on 9 August 2016, 20 days after publication in the Official Journal of the EU. The Delegated Regulation can be found at this link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178&from=EN

(iii) ESMA publishes updated Q&A on the implementation of EMIR

On 27 July 2016, ESMA issued an update of its Q&A on practical questions regarding the implementation of EMIR. The updated Q&A includes a new answer in relation to reporting of trades cleared by a clearing house which is not a central counterparty ("**CCP**") under the definition of a CCP which is contained in EMIR.

The Q&A clarifies that such entities should not be identified in the "CCP ID" field of EMIR reports. Also, in the case of trades that are executed in an anonymised market and cleared by a clearing house, the counterparty executing the transaction should request the trading

venue or the clearing house that matches the counterparties to disclose the identity of the other counterparty before the reporting deadline.

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

https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-emir-qa-2

(iv) ESMA issues opinion on Danish pension scheme to be exempt from central clearing under EMIR

On 3 August 2016, ESMA issued an opinion regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under EMIR.

Pension scheme arrangements ("**PSA**"s) meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Some pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult with the European Insurance and Occupational Pensions Authority ("**EIOPA**").

The opinion can be found at this link:
https://www.esma.europa.eu/sites/default/files/library/2016-1233_opinion_on_pension_schemes_exemption.pdf

A complete list of the types of entities/ arrangements that have been exempted from the clearing obligations of EMIR can be found at this link:
https://www.esma.europa.eu/sites/default/files/library/list_of_exempted_pension_schemes.pdf

(v) ESAs reject proposed amendments from the European Commission to technical standards on non-centrally cleared OTC derivatives

On 9 September 2016, the three European Supervisory Authorities ("**ESAs**"), (EBA, EIOPA and ESMA) published their opinion addressed to the European Commission expressing disagreement with its proposed amendments to the final draft RTS on risk mitigation techniques for OTC derivatives not cleared by a central counterparty, which were originally submitted for endorsement on 8 March 2016.

In particular, the ESAs disagree with the European Commission's proposal to remove concentration limits on initial margins for pension schemes and emphasise that these are crucial for mitigating potential risks pension funds and their counterparties might be exposed to.

A version of the draft RTS containing all of the EBA's corrections is included as an Annex to the opinion. The opinion can be found at this link:

https://esas-joint-committee.europa.eu/Publications/Opinions/ESAs%202016%2062%20(ESAs%20Opinion%20on%20RTS%20on%20OTC%20margins%20%20EMIR%2BRTS)-PR.pdf

(vi) Central Bank publishes letter relating to the reporting requirements of EMIR

Under EMIR, counterparties to derivative transactions are required to provide Trade Repositories (**"TR"**) with information regarding derivative trades. This information is also made available to, and monitored by, competent authorities to manage and mitigate systemic and contagion risk.

In addition to the aforementioned reporting, the Central Bank required non-financial counterparties with significant derivative positions to complete and submit an EMIR Regulatory Return (**"ERR"**) for the period ending 31 December 2015. During the course of 2016 the Central Bank undertook a detailed review of a selection of such ERR submissions to ensure that reporting is of a high standard. The review focused on whether the data was complete, accurate and reliable taking into account the requirements of EMIR.

Further to those reviews, the Central Bank published a letter (the **"Letter"**) on its website on 30 September 2016 to provide feedback to the ERR respondents on the main issues identified in order to help such respondents improve their compliance with the reporting requirements of EMIR. As such the findings in the Letter are relevant to all market participants who are required to report details of their derivative transactions to TRs. The recommendations in the Letter are as follows:

- A counterparty which has delegated reporting arrangements should ensure it receives regular feedback from the delegate in order to reconcile the data in the TR database with internal systems. Counterparties should also ensure, where required, that relevant remedial action is undertaken to ensure compliance with EMIR. The provision of such feedback should be included in any delegated reporting agreement entered into by a counterparty.

- Where a counterparty is availing of a delegated reporting services it should ensure it receives details of any rejected trade submissions from the reporting entity and that appropriate remedial action has been taken. This requirement should be included in any delegated reporting agreement entered into by a counterparty.

- The Central Bank expects that all counterparties regularly review TR Rejection Reports to ensure that:
    - All trade submissions are successfully reported to a TR;
    - Revised correct data submissions, where required, are made on a timely basis; and
    - Remedial action has been undertaken to limit the number of rejected reports in the future.

- A counterparty with a legal entity identifier (**"LEI**") in place should ensure that details of this are shared with any entity with which it trades or to which it has delegated reporting.

- All reviews of trade repository data should confirm that the counterparty is correctly identified with its LEI.

- Counterparties should ensure that LEIs are renewed annually. Lapsed LEIs will not be deemed valid for reporting purposes. In this regard entities offering delegated reporting services are recommended to monitor the renewal date for clients' LEIs and, in a timely manner, notify clients accordingly.

- Counterparties should ensure that a unique trade identifier ("UTI") is communicated to all relevant parties in advance of the trade being reported to a TR, is applied to individual trades. A counterparty should be in a position to explain how it ensures the UTI is unique.

- Where responsibility for UTI generation is delegated to another entity the delegating counterparty should ensure that tit is advised of the UTI in a timely manner. The counterparty should be aware of how it can be deemed unique.

A link to the Letter is set out below:

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

Market Abuse Regulation

(i) New Market Abuse Regime comes into force

On 3 July 2016, the new Market Abuse Regime became applicable in Ireland and across the EU. The Market Abuse Regime consists of the Market Abuse Regulation (Regulation 596/2014) ("**MAR**") and Directive 2014/57/EU on criminal sanctions for market abuse ("**CS MAD**"). MAR and CS MAD are collectively referred to as "**MAD II**".

The aim of MAD II is to enhance market integrity and investor protection. To this end, MAR updates and strengthens the existing market abuse framework by extending its scope to new markets and trading strategies and introducing new requirements and standards.

In addition, MAR does not limit its scope to financial instruments traded on regulated markets in the EU, but extends its requirements to financial instruments listed or traded on MTFs and OTFs, including derivatives.

Other changes include additional notification requirements in relation to suspicious activity, delay in the disclosure of inside information, managers' transactions and enhanced requirements regarding the preparation and maintenance of insider lists and the handling of inside information.

In Ireland, CS MAD (and certain elements of MAR including the delegated acts) have been transposed into Irish law by the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016) (the "**2016 Regulations**"). The 2016 Regulations replace the previous Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342 of 2005).

Following the implementation of the new Market Abuse Regime, the Central Bank published revised Market Abuse Rules and Guidance on the Market Abuse Regulatory Framework, which have been updated to align with MAD II.

The Irish Stock Exchange ("**ISE**") has also published revised rulebooks to reflect the changes to Market Abuse legislation.

Copies of the revised rulebooks together with updated forms may be accessed via the following link:

http://www.ise.ie/Media/News-and-Events/2016/Revised-ISE-rulebooks-reflect-changes-to-EU-Market-Abuse-Legislation.html

Dillon Eustace has published an article on the impact of MAD II for listed investment funds. A copy of the article is available at the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Market%20Abuse%20A%20New%20Regime%20for%20Investment%20Funds.pdf

A copy of the 2016 Regulations is available at the following link:

http://www.finance.gov.ie/sites/default/files/SI%20349%20of%202016.pdf

(ii) ESMA updates Q&A on MAR

On 13 July 2016, ESMA published an updated version of its questions and answers paper MAR (the "**Q&A**"). The aim of the Q&A is to promote common supervisory approaches and practices in the application of MAR and its implementing measures.

The updated Q&A includes a new question on the issue of managers' transactions and confirms that, with regard to the timing of the closed period referred to in Article 19(11) of MAR, there should be only one closed period relating to the announcement of every interim financial report and another relating to the year-end report.

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

https://www.esma.europa.eu/sites/default/files/library/2016-1129_mar_qa.pdf

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

On 13 July 2016, ESMA published its final guidelines clarifying the implementation of the MAR for individuals receiving market soundings and on delayed disclosure of inside information (the "**Guidelines**"). The Guidelines follow ESMA's consultation on market soundings and delayed disclosure of inside information under MAR in January 2016.

The Guidelines suggest some procedures that recipients of market soundings should adopt in order to protect themselves from any suggestions of insider dealing or unlawful disclosure. The Guidelines also include a list of scenarios in which the delayed disclosure of inside information might be justified to protect the issuer's legitimate interests, and where a delay would be likely to mislead the public.

Market soundings are communications of information made to potential investors before a transaction is announced, to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing. Article 11 of MAR introduces a new safe harbour from the offence of unlawful disclosure of inside information if certain conditions (including various procedural requirements set out in technical standards) are met.

The Guidelines set out:

- The factors that recipients of information must take into account when information is disclosed to them as part of a market sounding to assess whether the information amounts to inside information;

- The steps that those persons must take if inside information has been disclosed to them; and

- The records that those persons must maintain to demonstrate that they have complied with MAR.

On the legitimate interests of issuers to delay disclosure of inside information and on situations in which the delay of disclosure is likely to mislead the public, the Guidelines provide a non-exhaustive list of situations where the legitimate interests of the issuer are likely to be prejudiced by the immediate disclosure of inside information. ESMA states that each situation should be assessed on a case-by-case basis and that the ability to delay would represent the "exception to the rule" so should be interpreted narrowly. The Guidelines also provide a non-exhaustive list of situations in which the delay of disclosure is likely to mislead the public, and therefore, in such situations, the disclosure may not be delayed.

A copy of the Guidelines may be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1130_final_report_on_mar_guidelines.pdf

(iv) ESMA publishes final report on draft ITS on sanctions and measures under MAR

On 26 July 2016, ESMA published its final report on the draft ITS on sanctions and measures under MAR (the "**Report**"). The draft ITS prescribe how NCAs should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their Member States under MAR.

MAR provides for two types of submission of information, which are as follows:

- NCAs are required to provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR, as well as regarding administrative and criminal investigations undertaken in accordance with those articles; and

- Administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.

The text of the draft ITS is set out in Annex II to the Report.

In an accompanying letter, ESMA explains that it has not consulted on the draft ITS. This is because the draft ITS are addressed to, and set out obligations for, NCAs and ESMA

only. The letter also states that ESMA is currently finalising two other draft ITS and a RTS relating to co-operation within the EU and with third-country authorities, respectively.

The final ITS have been submitted to the European Commission for endorsement which will be followed by a non-objections period by the European Parliament and the Council of the EU.

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

https://www.esma.europa.eu/sites/default/files/library/2016-1171_final_report_mar_its_sanctions_and_measures.pdf

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

https://www.esma.europa.eu/sites/default/files/library/2016-1164_letter_to_commissioner_dombrovskis_mar_its.pdf

(v) Central Bank Issues Q&A on Managers Transactions and Council of the EU issues correction to translation errors

On 12 September 2016, the Central Bank published its first edition of the Market Abuse Regulatory Framework questions and answers paper (the **"Q&A"**). The Q&A sets out answers to queries that may arise in relation to the Market Abuse regime. It is published in order to assist in limiting uncertainty and is not relevant to assessing compliance with regulatory requirements.

Some issues that the Central Bank provided further clarity on include:

- **Reporting of managers transactions** – Article 19 of MAR requires persons discharging managerial responsibilities (**"PDMRs"**) and persons closely associated with PDMRs (**"PCAs"**) to report every transaction, conducted on their own account, in the shares and debt securities of the listed issuer, and in derivatives or financial instruments linked to such shares or debt securities. In the context of a listed fund, the directors are considered PDMRs;

- **Reporting timelines** – A PDMR or PCA is obligated to directly notify the issuer and the Central Bank of each transaction within 3 business days and the issuer is also required to separately notify the market of the transaction, by way of announcement, within the same 3 business day timeframe;

- **Minimum thresholds for reporting** – This has been introduced for reporting such transactions, with transactions under €5,000 in any calendar year not reportable. All transactions by a PDMR or PCA must be aggregated for the purpose of the threshold

and not netted, with the Central Bank clarifying that issuers may not elect to report transactions under the €5,000 threshold. Any transactions in excess of the threshold must be notified, including the transaction which results in this minimum threshold being exceeded;

- **Registration by PDMRs and PCAs with Central Bank Online Reporting System** – Each PDMR and PCA is required to register directly with the Central Banks online reporting system (**"ONR"**). The Central Bank will issue login passwords directly to the PDMR or PCA. A PDMR or PCA may not use the issuers ONR account to report their transactions; and

- **Notification to PDMRs and PCAs of their obligations under MAR** – A listed issuer should notify its PDMRs and PCAs of their reporting obligations in writing, and should maintain a copy of such notifications. PDMRs within a listed issuer should acknowledge their responsibilities in relation to reporting of transactions in the securities of the listed issuer. Each PDMR should inform the listed issuer of those persons which are closely associated with him/her. A listed issuer should record the identities of its PDMRs and PCAs

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

http://www.centralbank.ie/regulation/securities-markets/market-abuse/Documents/MARKETABUSE%20QA%20Edition%201%20(3).pdf

Dillon Eustace has prepared an article on the Q&A, a copy of which may be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Listings/Market%20Abuse%20Regulation%20Update.pdf

(vi) ESMA issues final guidelines on inside information and commodity derivatives under MAR

On 30 September 2015, ESMA published its final report containing guidelines on information relating to commodity derivatives that is to be disclosed under MAR (the "**Final Report**").

Article 7(5) of MAR requires ESMA to issue guidelines to establish a non-exhaustive list of information that is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, on the relevant commodity markets or spot markets.

The Final Report follows ESMA's March 2016 consultation paper on draft guidelines on disclosure of information on commodity derivatives markets or related spot markets under MAR.

ESMA states that it expects market participants, investors and regulators to take the list of examples provided in the guidelines into account when assessing whether information is inside information, although other conditions of the definition not covered by the guidelines should also be taken into account. The Final Report also explains that the guidelines do not impose any additional information disclosure requirements, as the concept of "required to be disclosed" refers to existing or future disclosure requirements (such as, under national law), independent of the guidelines.

The text of the guidelines is outlined at Annex 4 to the Final Report. The guidelines will be translated into the official languages of the European Union and published on ESMA's website. NCAs have two months from the issuance of the different language versions of the guidelines to confirm whether or not they intend to comply with them. If an NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons.

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

https://www.esma.europa.eu/press-news/esma-news/esma-issues-final-guidelines-commodity-derivatives-inside-information

Prospectus Directive

(i) ESMA publishes updated Q&A on prospectuses

On 15 July 2016, ESMA published an updated version of its questions and answers paper on prospectuses (the "**Q&A**"). The aim of the Q&A is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

The new questions relate to the dissemination of amended advertisements when the advertisement is a roadshow and the inclusion of alternative performance measures ("**APMs**") in information disclosed about the offer to the public or the admission to trading on a regulated market.

The Q&A confirms that the general requirement to amend a roadshow advertisement still applies. Accordingly, the issuer/offeror is required to disseminate an amended version of the information provided in the roadshow through the means which it considers most suitable to reach the participants of the roadshow (e.g. by way of a press release,

publication on the website of the issuer/offeror or by direct correspondence with the roadshow participants).

With regard to the provision of information about an APM which is not included in the prospectus during the course of a live presentation (e.g. a roadshow/interview) ESMA has confirmed the following:

- The Q&A states that, before the prospectus is approved and published, the issuer/offeror is free to provide information on the APM in question. However, in order to ensure that no APM is included in information disclosed about the offer/admission to trading without being included in the prospectus, the issuer/offeror should afterwards include the APM in the draft prospectus before this is approved and published. ESMA also states that, in such circumstances, its Guidelines on APMs should be taken into account; and

- The Q&A states that where the disclosure of information about an APM is not included in the approved and published prospectus, then the issuer/offeror can proceed in one of two ways:

    - It can elect to provide information on the APM and afterwards publish a supplement containing this APM, thereby ensuring consistency between the prospectus and the information disclosed about the offer/admission to trading. In such case, the ESMA Guidelines on Alternative Performance Measures should be taken into account; or

    - Alternatively, if the issuer, offeror or person asking for admission to trading does not wish to publish a supplement, it should decline to provide information on the APM as there will otherwise be a breach of the requirement set out in Article 12(1)(d) of Commission Delegated Regulation (EU) 2016/301, which sets out the RTS in relation to the approval and publication of the prospectus and dissemination of advertisements.

A copy of the updated Q&A may be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1133_25th_version_qa_document_prospectus_related_issues.pdf

(ii) European Parliament adopts European Commission's proposal for a new Prospectus Regulation

On 15 September 2016, the European Parliament adopted, with certain amendments, the European Commission's proposal for a new Regulation to replace the Prospectus Directive.

The main amendments adopted by the European Parliament are as follows:

- **Scope** – The Regulation shall not apply to offers of securities to fewer than 350 persons per Member State and to a total of no more than 4,000 persons in the EU (other than certain investors), or to offers with a total consideration in the EU below EUR1 million, calculated over a period of 12 months;

- **Exemptions** – Member States can decide to exempt offers from the prospectus requirement provided that the total consideration of the offer in the EU does not exceed EUR5 million, calculated over a period of 12 months;

- **Prospectus summary** – In exceptional circumstances, a competent authority may allow an issuer to produce a longer summary of up to 10 sides of A4 sized paper when printed (instead of six) where the complexity of the issuer's activities so requires. No summary will be required for a prospectus relating to the admission to trading on a regulated market of non-equity securities offered solely to qualified investors;

- **EU growth prospectus** – The Regulation introduces the concept of an EU growth prospectus for the proportionate disclosure regime set out in Article 15. Such prospectuses will have reduced content requirements and be in a standardised format.

The full text adopted by the European Parliament can be accessed via the following link:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0353+0+DOC+PDF+V0//EN

(iii) Prospectus Handbook – A Guide to Prospectus Approval in Ireland

On 20 September 2016, the Central Bank published the published the latest version of its Prospectus Handbook (the "**Handbook**") for issuers of transferable securities which are subject to the Prospectus Directive and certain law firms, listing agents, stockbrokers and investment banks who act as service providers to those issuers.

The changes made are regarding the change to the process for submission of final terms and some other minor technical changes.

The latest version of the Handbook will have effect from 20 September 2016.

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

http://www.centralbank.ie/regulation/securities-markets/prospectus/Documents/Prospectus%20Handbook%202014%20PDF.pdf

Transparency Directive

(i) Delegated Regulation on European Electronic Access Point published in Official Journal of the EU

On 31 August 2016, Commission Delegated Regulation (EU) 2016/1437 supplementing the Transparency Directive (Directive 2004/109/EC) with regard to regulatory technical standards on access to regulated information at Union level (the "**Delegated Regulation**") was published in the Official Journal of the EU.

No material changes have been made to the final draft of the Delegated Regulation published by the European Commission in May 2016. The European Electronic Access Point ("**EEAP**"), which is a web portal to be developed and operated by ESMA, will provide a single point of access to regulated information (including annual reports and major shareholding notifications) stored by officially appointed mechanisms ("**OAMs**") in each Member State.

The Delegated Regulation implements stringent rules on the facilitation of access through the EEAP, OAM communication technologies, support and maintenance and the information on the common list and classification of regulated information.

The Delegated Regulation entered into force on 20 September 2016, however, Article 7 (Unique identifier used by official appointed mechanisms) and Article 9 (Common list and classification of regulated information) will apply from 1 January 2017.

A copy of the Delegated Regulation may be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1437&from=EN

Consumer Rights Directive

(i) Consumer Protection Act 2007 (Competition and Consumer Protection Commission) Levy Regulations 2016 brought into law

On 15 September 2016 the Consumer Protection Act 2007 (Competition and Consumer Protection Commission) Levy Regulations 2016 (SI 479/2016) (the **"Regulations"**) were brought into law.

The Regulations amend the Consumer Protection Act 2007 (National Consumer Agency) Levy Regulations 2011 and provide for a levy scheme to fund the provision of information in relation to financial services including information in relation to the costs to consumers, the risks and benefits associated with the provision of those services and promoting the development of financial education and capability.

The text of the Regulations is available at the following link:

http://www.irishstatutebook.ie/eli/2016/si/479/made/en/pdf

Pensions Update

(i) EIOPA issues advice on the development of an EU single market for personal pension products

On 6 July 2016, EIOPA published its final advice on the further development of a single European Union market for personal pension products ("**PPPs**") (the "**Advice**").

The Advice completes the European Commission's Call for Advice on how the European Union-wide framework for personal pensions can be further developed so that they can contribute to meeting challenges such as an aging economy, the sustainability of public finances, the provision of adequate retirement incomes and foster increased long-term investment.

The Advice is based on EIOPA's 2014 preliminary report "Towards an EU-Single Market for personal pensions", EIOPA's 2015 consultation paper on the creation of a standardised Pan-European Personal Pension product ("**PEPP**") and EIOPA's 2016 consultation paper on EIOPA's advice on the development of an EU Single Market for PPP.

In the Advice, EIOPA confirms its views that a standardised PEPP with a defined set of regulated, flexible elements would be best placed to support sustainable pensions via personal pension savings that are safe, transparent, cost-effective and sufficiently flexible to promote a Single Market for personal pensions. EIOPA remains convinced that a PEPP

based on a 2nd regime legislative approach, which is a regime that operates in addition to the national regimes of the EU Member States, can be a successful prospect for PEPP manufacturers, distributors and consumers alike and proposes a PEPP that is characterised by the following features:

- Standardised information provision based on the proposals of a KID within the PRIIPs framework;
- Standardised limited investment choices and defining one default "core" investment option, where the investment strategy takes into account the link between accumulation and decumulation;
- Regulated, flexible, biometric and financial guarantees;
- Regulated, flexible caps on cost and charges;
- Regulated, flexible switching and transfer of funds; and
- No specification of decumulation options.

It is important to note that the Advice is restricted to personal pension products and does not cover conventional public pensions systems or occupational pension systems.

EIOPA's Advice can be found in full at the following link:

https://eiopa.europa.eu/publications/submissions-to-the-ec

(ii) Pensions Authority consults on the reform and simplification of supplementary funded private pensions

On 18 July 2016, the Pensions Authority issued a Consultation Paper on the Reform and simplification of supplementary funded private pensions (the "**Consultation Paper**"). The Consultation Paper sets out the Pensions Authority's proposals to reform and simplify the landscape for the provision of supplementary funded private pensions in Ireland with a view to improving outcomes for pension savers and increasing public confidence and understanding. It was prepared in response to a request from the Minister for Social Protection to the Pensions Authority in 2015 to bring forward proposals to reform and simplify the wider pensions' landscape to make pension rules easier to understand and to remove duplications and anomalies in the current system.

The Consultation Paper contains recommendations relating to the following:

- Changes to trusteeship to include a minimum qualification and experience standard on a collective basis and an ongoing CPD requirement;
- The introduction of a system of scheme authorisation;
- Enhancements to the current supervisory and enforcement processes; and
- Rationalisation of pension vehicles.

The Pension Authority notes that there is an emphasis on defined contribution ("**DC**") pension provision in the Consultation Paper as it is expected that most new pension provision will be of this type. However, the reform proposals set out in the Consultation Paper are intended to apply equally to defined benefit ("**DB**") provision to ensure that those running DB schemes do so in a manner which provides greater security for their members.

Submissions were invited from all stakeholders by 3 October 2016. The Pension Authority's final proposals, which will take account of the responses to the Consultation Paper, will be submitted to the Minister for Social Protection. The Minister for Social Protection and the Government will need to approve any proposals for amendments to primary legislation. If the Government decides to approve the Pensions Authority's proposals, considerable work will be required to translate these proposals into specific legislative provisions. Therefore, it is likely that there will be further consultation on specific aspects of implementation in the future.

The Consultation Paper can be accessed via the following link:

http://www.pensionsauthority.ie/en/Policy/Consultation_Papers/Open_Consultation_Papers/Reform_Consulation_Paper_issued_by_the_Pensions_Authority_.pdf

(iii) European Commission launches public consultation on a potential EU personal pension framework

On 27 July 2016, the European Commission issued its public consultation 'Capital Markets Union: Action on a potential EU personal pension framework' (the "**Consultation**").

The Consultation follows the European Commission 's announcement in its Action Plan on Building a Capital Markets Union (September 2015) that it will assess the case for a policy framework to establish a successful European market for simple, efficient and competitive personal pensions, and determine whether EU legislation is required to underpin this market.

The Consultation builds on previous work carried out by the European Commission and EIOPA on personal pensions and seeks views on how to best address the current

obstacles within the personal pensions market. The Consultation will contribute to assessing the feasibility of a potential EU policy framework to establish a successful European market for simple, efficient and competitive personal pensions.

The Consultation targets three groups:

- Private individuals (personal pension holders and potential customers of such products);
- Consumer organisations representing existing or future consumers; and
- Stakeholders who provide, would provide, or represent organisations that are or would be involved in providing personal pensions, public authorities regulating personal pensions, academics or other professionals involved with personal pensions in a professional capacity.

The European Commission is seeking feedback on the Consultation by 31 October 2016.

Further information on the Consultation is available at the following link:

http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/docs/consultation-document_en.pdf

(iv) EIOPA finalises Report on Good Practices on Communication Tools and Channels for communicating to occupational pension scheme members

On 31 August 2016, EIOPA published its final report on Good Practices on Communication Tools and Channels for communicating to occupational pension scheme members (the "**Report**"). This follows a public consultation on a draft version of the Report which closed on 22 March 2016. All comments were duly considered by EIOPA and the Report was updated where appropriate.

The Report summarises EIOPA's findings and presents Good Practices with regard to the use of different communication tools and channels to communicate to members of occupational pension schemes operated by Institutions for Occupational Retirement Provision ("**IORPs**") and insurance undertakings (for insurance-based occupational pensions).

EIOPA identified seven Good Practices aiming to improve the communication tools and channels to occupational pension scheme members. In the Report, EIOPA acknowledged that "one size does not fit all" when it comes to communicating effectively and reached the conclusion that a multi-channel communication strategy which combines several different

communication tools and channels seems to be an effective way to reach different types of scheme members with different habits and preferences.

It must be noted that the Good Practices are voluntary and neither legally binding on any party nor subject to the "comply or explain" principle.

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

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-16-175_Report_on_Comm_Tools_and_channels.pdf

Central Bank of Ireland

(i) Central Bank publishes Guidance Note on Completing an Application for Authorisation as a Retail Intermediary

On 5 July 2016, the Central Bank issued an updated guidance note on completing an application for authorisation as a retail intermediary in Ireland under the European Communities (Insurance Mediation) Regulations 2005 (**"IMR"**); the Investment Intermediaries Act 1995 (**"IIA"**); the Consumer Credit Act 1995 (**"CCA"**) and the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (**"CMCAR"**) (the **"Guidance Note"**).

To obtain an authorisation as a retail intermediary firm, an application must be submitted to the Central Bank which demonstrates that the applicant is in a position to comply with the appropriate regulatory requirements.

The Guidance Note sets out the criteria for assessing applicants, how to make an application and detailed guidance on completing the application form. The Appendix to the Guidance Note provides details on the headings to be covered in the Business Plan and Programme of Operations.

The Guidance Note can be accessed via the following link:

https://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/Documents/230316%20Guidance%20Note%20for%20Completing%20an%20Application%20form.pdf

(ii) Central Bank publishes discussion paper on the payment of commission to intermediaries

On 26 July 2016, the Central Bank published a Discussion Paper on the Payment of Commission to Intermediaries (the "**Discussion Paper**"). The purpose of the Discussion Paper is to build on the Central Bank's Guidelines on the Variable Remuneration Arrangements for Sales Staff issued in July 2014 and to obtain feedback from interested parties on the risks and benefits to consumers of insurance companies, banks and other financial firms paying commissions to intermediaries who distribute their financial products.

The Discussion Paper is open for comment until 18 October 2016 and the Central Bank has invited comments from consumers, financial entities, non-financial corporates, financial advisors, academics and researchers and intermediaries.

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

https://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Discussion%20Paper%20on%20Payment%20of%20Commission%20to%20Intermediaries.pdf

(iii) Central Bank publishes results of survey on foreign-exchange contracts and OTC interest rate derivatives market in Ireland

On 1 September 2016, the Central Bank of Ireland published the results of the triennial survey on foreign exchange and interest-rate derivatives market activity in Ireland. The results form part of a global survey carried out by the Bank for International Settlements conducted in April 2016.

The key findings of the survey are:

- There was a substantial decline in the average daily turnover of both foreign-exchange contracts and interest-rate derivatives in Ireland between 2013 and 2016;
- In terms of foreign-exchange contracts, average daily turnover declined in Ireland from $10.3 billion a day in April 2013 to $2.2 billion per day in April 2016. This is a decline of 78 per cent, unadjusted for exchange rate movement;
- For interest-rate derivatives, average daily turnover fell in Ireland from $2.9 billion in April 2013 to $1.1 billion per day in April 2016. This is a decline of 63 per cent, unadjusted for exchange rate movements;
- The global results show that trading in foreign-exchange markets averaged $5.1 trillion per day in April 2016, down from $5.4 trillion in April 2013;

- The global results also show that daily turnover in OTC interest-rate derivatives averaged $2.7 trillion in April 2016, and this was an increase from $2.3 trillion in April 2013; and

- Ireland ranked 46th globally in April 2016 in terms of turnover of foreign-exchange contracts, down from 33rd in April 2013. In terms of interest-rate derivatives, Ireland ranked 28th globally in April 2016, down from 23rd in 2013.

The Irish results may be accessed via the link below:

http://www.centralbank.ie/polstats/stats/Pages/bissurvey.aspx

The global results may be accessed via the following link:

http://www.bis.org/publ/rpfx16.htm

(iv) Central Bank publishes letter to industry following themed inspection of the Irish structured retail product industry

On 1 September 2016, the Central Bank published a letter to industry following its themed inspection of structured retail products in MiFID authorised investment and stockbroking firms and credit institutions (the **"Letter"**). The themed inspection follows the Central Bank's Consumer Protection Outlook Report, published in February 2016.

The themed inspection identified that there has been a move away from capital protected deposit-based products towards more complex, capital at risk products and that the Irish market consists mainly of two types of structured retail products – deposit-based structured retail products and note-based structured retail products.

The themed inspection identified a number of areas of concern, namely:

- **Weak Product Governance Arrangements –** Firms' product governance arrangements were reviewed against the good practices set out in ESMA's Opinion on Good Practices for Product Governance Arrangements in relation to Structured Retail Products and ESMA's Opinion on MiFID Practices for Firms Selling Complex Products. The inspection identified weaknesses in the following areas:

  (i) Quality of policies and procedures;

  (ii) Target market identification;

  (iii) Product testing;

(iv) Counterparty due diligence;

(v) Training of distributors; and

(vi) Review process

Further details on these findings and good practices identified are set out in Appendices 2 and 3 of the Letter.

A product performance comparison was also carried out and identified that over half of the structured retail products that matured in 2014 and 2015 underperformed against NTMA State Savings Products, suggesting that, in some circumstances, a less complex product may meet the consumer's needs and reinforces the need for firms to have strong product governance arrangements in place, particularly in relation to product testing, to ensure that they are delivering fair outcomes for consumers.

- **Credit linked notes being sold to retail clients** – The Central Bank identified a particular type of structured retail product being sold to retail clients which combines a note with a derivative, in the form of a credit default swap. Capital protection and income from these products are generally conditional upon the creditworthiness of multiple counterparties, namely an issuer and one or more reference entities.

  The Central Bank considers these products to be particularly complex and risky given the layers of credit risk involved and the potential for a consumer to lose their full investment. The Central Bank is also concerned that such risks are not being adequately highlighted to consumers.

- **Capital Protected/Protection** – In the context of firms' regulatory disclosure requirements, the term 'capital protection' or 'capital protected' is deemed to be relevant material information to be disclosed to consumers. However, the use of such terminology can create a perception of safety which may not be consistent with the product's features and risks.

  The inspection identified various types of structured retail products being marketed as capital protected, however, this varies depending on the set up of the product. In order to provide information to a consumer that is fair, clear and not misleading, the Central Bank expects firms, for any products where capital is at risk, to include capital at risk warnings in a prominent position on all information to clients. This includes, but is not limited to, brochure cover page, key features documents, webpages and other marketing materials.

The Central Bank highlights that firms should be aware of forthcoming EU legislation (namely the PRIIPs KID Regulation and MiFID II) which will impose more detailed requirements on manufacturing and distributing structured financial products and other financial instruments.

The Central Bank states that all firms are required to immediately consider the issues identified in the Letter and take any remedial actions necessary. The Central Bank also expects that the Letter is presented, discussed and minuted at the next meeting of the board of directors.

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

https://www.centralbank.ie/regulation/industry-sectors/investment-firms/Documents/Industry%20Letter%20-%20Structured%20Retail%20Products%20Themed%20Inspection%20-%2001%20September%202016.pdf

(v) Central Bank issues Guidance on Information Technology and Cybersecurity Risks

Following several inspections, thematic reviews and ongoing supervisory engagements throughout the course of 2015 and 2016, the Central Bank published on September 13, 2016 Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks (the **"Guidance"**).

The Guidance applies to all regulated firms in Ireland and follows a Central Bank letter to industry in September 2015 which communicated the results of its thematic inspection in relation to cybersecurity and the related operational risks across investment firms, fund service providers and stockbrokers.

The Guidance highlights that, based on the Central Bank's supervisory experience to date, firms are not implementing sufficiently robust IT systems and controls and must increase their capability to deal with IT failures and cybersecurity incidents in order to minimise any potential impact on their business and reputation.

For most firms in the financial services sector, IT is a core aspect of the functioning of the business, with most (if not all) key functions supported or run by IT. The Central Bank highlights a number of inadequate practices, namely a lack of prioritisation, a lack of awareness and a lack of understanding of IT and cybersecurity related risks and point out that more attention is required at both senior management and Board level to ensure that these risks are managed effectively. The Central Bank also identifies a number of recommended practices covering:

- **Board of Directors and Senior Management Oversight of IT and Cybersecurity Risk –** The Central Bank expects firms to develop and document a comprehensive Board approved IT strategy which is aligned with the overall business strategy with sufficient staff and financial resources allocated to the strategy to ensure it can be executed efficiently. The Guidance emphasises the need for the Board to receive updates on key IT issues, including major IT projects, IT priorities and significant IT incidents as well as regular reports on key IT risks.

- **IT Specific Governance –** The Central Bank recommends that firms should ensure that documented policies, standards and procedures which address the identification, monitoring, mitigation and reporting of firms' IT related risks are in place and that the roles and responsibilities in managing IT risks are clearly defined, documented and communicated to relevant staff. In addition, a sufficiently senior person in the firm should be appointed with responsibility for IT and cybersecurity matters. The Central Bank recommends that these policies and procedures are reviewed and updated on a regular basis.

- **IT Risk Management Framework –** The Central Bank expects that firms develop, implement, maintain and communicate an IT risk management framework, which should facilitate a comprehensive review of IT risks, encompassing risk identification, assessment, monitoring and testing of its effectiveness and set out staff and senior management responsibilities and accountability. The Guidance provides that risk assessments should be carried out on a regular basis, considering both internal and external sources of risk and firms should maintain an inventory of all IT assets within the firm.

- **Disaster Recovery and Business Continuity Planning –** One of the issues raised by the Guidance is that a high reliance on IT for critical business operations exposes firms to the risk of severe disruption. Firms should ensure that documented disaster recovery and business continuity plans are in place and that sufficient resources are provided to support effective planning, testing and execution of same. The Central Bank expects that the Board is provided with updates on the various scenarios considered and the development and testing of the disaster recovery and business continuity plans.

- **IT Change Management –** The Guidance outlines that firms are expected to have in place adequate systems to manage the change/upgrade/replacement of IT systems, including having approval requirements in place.

- **Cybersecurity –** Firms are required to have in place a documented strategy to address cyber risk, which is reviewed and approved at Board level. The Central Bank recommends that training programmes are implemented to enable staff to identify good IT security practices, common threat types and familiarise themselves with the

firm's policies and procedures regarding the appropriate use of applications, systems and networks. The Central Bank provides that, at a minimum, cyber risk management should address the identification, prevention and detection of security events, threats and incidents, security incident handling and recovery planning after an incident. Firms should also have in place a documented cybersecurity incident response plan which provides a roadmap for the actions the firm will take during and after a security incident. The Central Bank should be notified in circumstances where a cybersecurity incident has a significant adverse effect on the firm's ability to provide adequate services to its customers, its reputation or its financial condition.

- **Outsourcing of IT Systems and Services –** The Central Bank expects firms to conduct thorough due diligence on any potential service providers, to include consideration of their technical capabilities, performance track record, financial strength and viability, service quality and reliability. In circumstances where any IT services are outsourced, the contract between the firm and the service provider should include a Service Level Agreement detailing sufficiently robust provisions in relation to security, service availability, performance metrics and penalties. The Guidance also outlines the requirement to have in place an exit management strategy to reduce the risk of disruption in the event that key outsourced IT services are unexpectedly withdrawn by the service provider or terminated by the firm.

For a copy of the Guidance in full see the following link:

http://www.centralbank.ie/publications/Documents/Cross%20Industry%20Guidance%20Information%20Technology%20Cybersecurity%20Risks.pdf

An article prepared by Dillon Eustace on the Guidelines is available at the following link:

http://www.dilloneustace.com/download/1/Publications/Regulatory%20and%20Compliance/Central%20Bank%20publishes%20Cross%20Industry%20Guidance%20in%20respect%20of%20Information%20Technology%20and%20Cybersecurity%20Risks.pdf

(vi) Central Bank to investigate firms' compliance with pre-approved control functions

On 30 September 2016, in the fourth edition of the Intermediary Times, the Central Bank announced its intention to investigate regulated financial service providers' compliance with their obligations under section 21 of the Central Bank Reform Act 2010 and the Central Bank's Guidance on Fitness and Probity Standards (the **"Guidance"**).

The Guidance required regulated financial service providers submit to the Central Bank by 31 December 2011, a list of employees performing pre-approval controlled functions ("**PCFs**") as of 1 December 2011. The Central Bank notes that that a number of firms did

not comply with this obligation by failing to submit to the Central Bank a list of employees performing PCFs as of 1 December 2011.

Additionally, the Central Bank advises that there is an on-going obligation for the purposes of Section 21 of the Central Bank Reform Act 2010, whereby an Annual PCF Confirmation Return (the **"Annual PCF Return"**) is required to be submitted for all PCF holders. The purpose of this return is to confirm that all PCF holders are compliant with the Central Bank's Fitness and Probity Standards and they continue to agree to abide by the Standards.

During October and November 2016, the Central Bank intends to engage with firms which have failed to comply with these obligations.

A copy of the Intermediary Times is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/Documents/September%20Edition.pdf

Anti-Money Laundering/Counter-Terrorist Financing

(i) European Commission publishes proposal for a Directive amending MLD4

On 5 July 2016, the European Commission published its legislative proposal for a Directive amending the Fourth Money Laundering Directive ((EU) 2015/849) (**"MLD4"**), along with a questions and answers document (the **"Proposal"**). The European Commission also published a factsheet on the proposed Directive coupled with an impact assessment.

The Proposal has been drafted in response to the growing threat of terrorism within the EU, as well as in an attempt to enhance transparency within the global financial system – a particularly relevant consideration in light of concerns arising from the "Panama Papers" mass data leak.

The measures contained in the Proposal were developed in connection with the European Commission's February 2016 Action Plan for strengthening the fight against terrorist financing.

The aim of the Proposal is to complement the existing EU preventative legal framework by setting out additional measures to better counter the financing of terrorism and to ensure increased transparency for financial transactions and legal entities.

The Proposal contains a number of amendments to MLD4, including in relation to the disclosure of beneficial ownership information, the information request powers available to

Financial Intelligence Units (**"FIUs"**), and the enhanced due diligence measures (**"EDD"**) applicable to entities based in high-risk third countries. In a number of cases, the proposed amendments introduce EU-wide requirements in areas where similar domestic steps have already been taken in one or more Member States.

However, one of the most significant details of the Proposal is the proposed change to the implementation date for MLD4. Under the original draft, Member States were required to implement the laws, regulations and administrative provisions necessary to comply with MLD4 by 26 June 2017. However, if the Proposal is approved, this implementation date will be brought forward to 1 January 2017, meaning that Member States will have a very short timeframe to ensure that the requirements of MLD4, including those proposed amendments and additions contained in the Proposal, are implemented in full. However given a large number of Member States have expressed concerns about this timetable, it is likely that this date will be changed.

The Proposal has been passed to the European Parliament and Council for consideration. The Council held a preliminary exchange of views on the Proposal at an Economic and Financial Affairs Council meeting on 12 July 2016 where it was agreed to commence technical work on the Proposal. It is understood that the Proposal is currently at the preparatory phase in the European Parliament.

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

http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

(ii) Commission Delegated Regulation (EU) 2016/1675 identifying high-risk third countries with strategic deficiencies was published in the Official Journal of the EU

On 20 September 2016, Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing MLD4 by identifying high-risk third countries with strategic deficiencies was published in the Official Journal of the EU (the **"Delegated Regulation"**).

The Delegated Regulation sets out the list of third-country jurisdictions, as identified by the European Commission using the non-exhaustive list of criteria set out in Article 9 of MLD4, which have strategic deficiencies in their anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the European Union ("**high-risk third countries"**).

Under Article 18(1) of MLD4, firms are required to apply enhanced due diligence measures (**"EDD"**) when establishing business relationships or carrying out transactions with natural persons or legal entities established in high-risk third countries.

In making its assessments, the European Commission checked data against various globally-recognised benchmarks, including materials produced by the Financial Action Task Force (**"FATF"**). The European Commission explains that its intention in adopting the Delegated Regulation is to reflect in EU law a listings process similar to that carried out by the FATF. However, it remains free to differ from the FATF list, for example, by including countries that are not listed by the FATF. It did not consult on the list, as it corresponds to the agreed international list.

The European Commission advised that the fundamental nature of the list is not to apply a "name and shame" approach. Rather, it is designed to indicate the countries with which the EU is determined to maintain and intensify a dialogue, with a view to removing the identified deficiencies. The objective is not to limit the economic or financial relations with listed countries. On the contrary, it considers that the list will contribute to increasing the confidence of firms dealing with the listed countries by ensuring the application of appropriate controls.

In a related press release, the European Commission states that it intends to review the list at least three times each year (after each FATF meeting), assessing the latest developments in high-risk jurisdictions.

The Delegated Regulation entered into force on 23 September 2016.

A copy of the Delegated Regulation may be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1675

(iii) EBA publishes opinion on European Commission proposal to bring virtual currencies within the scope of MLD4

On 11 August 2016, the EBA published its opinion on the European Commission's proposal to bring virtual currency exchange platforms and custodian wallet providers within the scope of MLD4 (the "**Opinion**"). The EBA believes that this will be an important step to mitigate risks of money laundering and terrorist financing that arise from the use of virtual currencies. However, it adds that clarifications to the European Commission's proposals are needed and that NCAs across the EU should be equipped with the appropriate tools to be able to effectively supervise the proposed requirements.

The EBA's recommendations include:

- Implementation deadlines for the proposed amendments should be set in a way that facilitates their consistent implementation across the EU, and in a way that enables competent authorities to exchange information more easily and efficiently;

- National sanction powers as proposed in the European Commission's amendments to MLD4 should be retained, while transactions in virtual currencies should remain outside of the scope of the Payment Services Directive (2007/64/EC); and

- Measures should be taken to clarify the regulatory status of virtual exchange platforms and custodian wallet providers to avoid risk of misrepresentation, including whether these entities should be allowed to carry out regulated financial activities at the same time as carrying out virtual currency transactions.

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

http://www.eba.europa.eu/documents/10180/1547217/EBA+Opinion+on+the+Commission%E2%80%99s+proposal+to+bring+virtual+currency+entities+into+the+scope+of+4AMLD

Data Protection

(i) Cyber-Security Directive published in the Official Journal of the EU

On 19 July 2016, the text of the Directive concerning measures for a high common level of security of network and information systems across the Union ((EU) 2016/1148) (the "**Cyber-Security Directive**") was published in the Official Journal of the EU and entered into force on 8 August 2016.

Among other things, the Cyber-Security Directive establishes security and notification requirements for "operators of essential services" and "digital service providers", which includes certain entities in the banking and financial market infrastructure sub-sectors that meet criteria set out in Article 5(2) of the Cyber-Security Directive.

Member States are required to identify the operators of essential services within an establishment on their territory by 9 November 2018, and to review and update their list at least every two years after 9 May 2018.

Member States are required to adopt national measures to transpose the requirements of the Cyber-Security Directive into national law by 10 May 2018.

A copy of the text of the Cyber-Security Directive is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1148&from=EN

(ii) EU-US Privacy Shield enters into force

On 12 July 2016, the European Commission published Commission Implementing Decision on the adequacy of the protection provided by the EU-US Privacy Shield (the "**Implementing Decision**") formally adopting the new framework for EU-US data transfers.

The Privacy Shield acts as a replacement for the EU-US Safe Harbour regime which was declared invalid by the Court of Justice of the EU on 6 October 2015. The aim of the Privacy Shield is to protect the fundamental rights of individuals whose data is transferred to the US and to provide legal certainty for businesses. The European Commission stated that the new framework will impose stronger obligations on companies in the US to protect the personal data of individuals and provides for stronger monitoring of and enforcement against participating companies by US authorities. Additionally, EU concerns regarding US surveillance have been addressed through commitments and written assurances made by US authorities and by reforms in US surveillance laws.

Some of the key features of the Privacy Shield are:

- **Obligations on companies** – the Privacy Shield imposes strict obligations on companies transferring EU citizens' data to the US and contains effective supervision mechanisms to ensure that companies respect their obligations, including sanctions or exclusion if they do not comply. The new rules also include tightened conditions for onward transfers to other partners by any companies participating in the scheme;

- **Clear safeguards and transparency obligations on U.S. government access** – the US government has given the EU written assurance from the Office of the Director of National Intelligence that any access of public authorities for national security purposes will be subject to clear limitations, safeguards and oversight mechanisms, preventing generalised access to personal data. Additionally, the US has committed to establishing an Ombudsperson to deal with complaints from individuals if they fear that their personal information has been used unlawfully by US authorities in the area of national security;

- **Effective protection of EU citizens' rights with several redress possibilities** – the Privacy Shield offers a number of redress mechanisms for any individual who considers that their personal data has been misused; and

- **Annual joint review mechanism** – the mechanism will monitor the functioning of the Privacy Shield, including the commitments and assurance as regards access to data for law enforcement and national security purposes. The European Commission and the US Department of Commerce will conduct the review and associate national intelligence experts from the US and European Data Protection Authorities.

The European Commission also published a fact sheet and a questions and answers document (the "**Q&A**") on the application of the Privacy Shield.

The Q&A explains the role of the newly created Ombudsperson, written commitments and assurance by the US that any access by public authorities to personal data transferred under the new arrangement on national security grounds will be subject to clear conditions, limitations and oversight, preventing generalised access.

The Q&A also addresses issues such as the regular review of the adequacy decisions process under the Privacy Shield, as well as the limitations for access to personal data for national security purposes and how individual complaints will be handled and resolved.

A copy of the Implementing Decision is available at the following link:

http://ec.europa.eu/justice/data-protection/files/privacy-shield-adequacy-decision_en.pdf

(iii) Data Protection Office issues Guidance on Anonymisation and Pseudonymisation

On 13 September 2016, the Data Protection Office issued a Guidance Note on Anonymisation and Pseudonymisation (the **"Guidance Note"**) in respect of personal data.

Given that European citizens have a fundamental right to privacy, the Data Protection Office notes the importance of organisations, which process personal data, being cognisant of this right. The Data Protection Office states that, when carried out effectively, anonymisation and pseudonymisation can be used to protect the privacy rights of individual data subjects and allow organisations to balance this right to privacy against their legitimate goals. In issuing this Guidance Note, the Data Protection Office aims to give guidance on using these techniques.

Some of the key points in the Guidance Note include the following:

- Irreversibly and effectively anonymised data ceases to be "personal data" and the data protection principles do not have to be complied with in respect of such data;
- Pseudonymised data remains personal data;
- If source data is not deleted at the same time that the anonymised data is prepared, the anonymised data will still be considered "personal data", subject to the Data Protection Acts, where the source data could be used to identify an individual from the anonymised data; and

- Data can be considered "anonymised" from a data protection perspective when data subjects are not identified, having regard to all methods reasonably likely to be used by the data controller or any other person to identify the data subject.

The Guidance Note can be found at the following link:

https://dataprotection.ie/viewdoc.asp?DocID=1594&ad=1

Companies Act 2014

(i) Directors' Compliance Statement under the Companies Act 2014

The Companies Act 2014 (the **"Act"**), which consolidated existing company law, reintroduced the company law obligation (albeit amended) on directors of certain companies to make an annual compliance statement in their directors' report. The statement must acknowledge that the directors are responsible for securing the company's compliance with its 'relevant obligations' and confirm that certain things have been done, or if they have not been done, explain why they have not been done. This obligation is separate and distinct to the obligation under the notice served on insurance and reinsurance undertakings under Section 25 of the Central Bank Act 1997 requiring those undertakings to submit an annual compliance statement to the Central Bank, which also remains in force.

The directors' compliance statement requirement under the Act will apply to:

- Public limited companies (**"plc"**); and

- 'large' private companies limited by shares, designated activity companies and guarantee companies which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million. These prescribed thresholds are applied on an individual company basis as opposed to a group basis.

Directors of all insurance or (re)insurance undertakings that are structured as a plc or that meet the thresholds of a 'large' private company will be obliged to sign a compliance statement and include this in their directors' report for years ending on or after 31 May 2016.

In light of the fact that the requirement to prepare a directors' compliance statement will apply to years ending on or after 31 May 2016, we recommend that the directors of insurance and reinsurance companies to which this requirement applies take the

necessary steps to comply with the requirement to produce a directors' compliance statement.

Dillon Eustace has issued a publication relating to directors' compliance statements under the Act, a copy of which is available at the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Directors%20Compliance%20Statement%20under%20the%20Companies%20Act%202014%20Impact%20on%20Insurance%20Reinsurance%20Undertakings%20for%20years%20ending%20on%20after%2031%20May%202016.pdf

Dillon Eustace
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CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501
E-mail: enquiries@dilloneustace.ie
Website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the Regulatory and Compliance team members below.

Breeda Cunningham
E-mail:
breeda.cunningham@dilloneustace.ie
Tel : + 353 1 673 1846
Fax: + 353 1 667 0042

Michele Barker
E-mail: michele.barker@dilloneustace.ie
Tel : + 353 1 673 1886
Fax: + 353 1 667 0042

Rose McKillen
E-mail: rose.mckillen@dilloneustace.ie
Tel : + 353 1 673 1809
Fax: + 353 1 667 0042

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO