Insurance Quarterly Legal and Regulatory Update

Period covered:

1 October 2013 to 31 December 2013

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Solvency II

(i) The Central Bank Publishes the Final Guidelines for the Preparation of Solvency II

On 4 November 2013, the Central Bank published its final Guidelines on Preparing for Solvency II (the "Guidelines"). This follows the European Insurance and Occupational Pensions Authority ("EIOPA")'s publication of their final Guidelines for the Preparation of Solvency II on 27 September 2013. The Central Bank's Guidelines closely reflect EIOPA's Guidelines and are linked to the Central Bank's PRISM risk-based supervisory framework. The objective of the Guidelines is to allow effective and meaningful preparation for Solvency II, so that when Solvency II is applicable, it can be fully complied with.

The Guidelines cover:

- Systems of Governance;
- Forward Looking Assessment of Own Risks;
- Submission of Information; and
- Pre-application for Internal Models.

An individual guideline paper covering each of the above key areas has been published, as well as a general introductory paper to the Guidelines.

The Guidelines will apply to all insurance and reinsurance undertakings except those excluded due to specified size criteria or due to ceasing new business by 1 January 2016. Where an undertaking believes it qualifies for an exemption it will need to notify the Central Bank of the facts that support that conclusion by completing the necessary template set out in the Guidelines. Following receipt of the appropriate template the Central Bank will confirm if it agrees that the undertaking qualifies for the exemption. Where an undertaking is exempted due to ceasing new business it will need to provide an annual confirmation to the Central Bank confirming it still meets the eligibility criteria.

The majority of the Guidelines are applicable with effect from 1 January 2014 but some provisions apply from later dates. Where the Guidelines refer to a PRISM impact category, this is based on the undertaking's PRISM impact categorisation as at 31 December 2013. Where a High or Medium

High impact undertaking is recategorised as Low or Medium Low during the transitional period, then the higher standard will continue to apply.

The Guidelines will apply until the implementation date of Solvency II, now scheduled for 1 January 2016.

The Systems of Governance Guidelines will apply from 1 January 2014, however Low and Medium-Low impact undertakings are not expected to establish the four key functions as detailed in Guideline 5 (namely risk management, compliance, internal audit and actuarial) until 1 January 2015. High and Medium High impact undertakings and groups are required to adhere to the full guidelines, including the establishment of the four key functions, from 1 January 2014.

The Forward Looking Assessment of Own Risks (“FLAOR”) Guidelines are relevant to:

- The role of (re)insurance undertakings’ boards of directors;
- Documentation requirements; and
- Strategic management and decision making processes.

There are three key elements of the FLAOR Guidelines:

1) An assessment of overall solvency needs - the first assessment should be completed on or before the end of 2014;
2) An assessment of whether the undertaking would comply on a continuous basis with Solvency II capital requirements and technical provisions; and
3) An assessment of deviations of the risk profile from standard formula assumptions.

The requirements set out in 2) and 3) above apply only to High and Medium High impact undertakings and certain groups, and need only be undertaken on or before the end of 2015.

The FLAOR Guidelines require undertakings to submit a FLAOR supervisory report on least an annual basis and within 2 weeks of the board of directors of the undertaking having reviewed and approved the assessment. The first such report is due on or before 31 December 2014, while the second report is due on or before 31 December 2015.

The Submission of Information Guidelines apply to High and Medium High impact undertakings only.

The Pre-application for Internal Models Guidelines require undertakings to submit information on the Solvency Capital Requirement (“SCR”) calculated both with the standard formula and the full/partial internal model. Standard formula information should cover the overall SCR and the following risk categories for the risks within the scope of the internal model:

- Market risk;
- Counterparty default risk;
- Life underwriting risk;
- Health underwriting risk;
- Non-life underwriting risk;
- Non-life catastrophe risk; and
- Operational risks.

The Central Bank has said it will only accept areas for review where the development work has been completed, documented and, in general, validated.

The Guidelines can be viewed via the below link to the Central Bank's website:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Pages/Guidelines.aspx.

(ii) Omnibus II

On 13 November 2013, the European Commission, Council and Parliament reached a provisional agreement on the Omnibus II Directive. The European Council has indicated that it will adopt Omnibus II without discussion once the text has been finalised. The Parliament is expected to consider and vote on Omnibus II during its plenary session to be held from 24 to 27 February 2014.

Due to the delay in finalising the Omnibus II Directive, the deadline for the application of Solvency II (2009/138/EC) has been postponed to 1 January 2016.

EIOPA Update

(i) EIOPA Publishes Action Plan for 2014/2015 for Colleges of Supervisors and the List of Cross-Border Insurance and Reinsurance Groups for which a College is in Place

On 9 October 2013, EIOPA published the Action Plan for 2014/2015 for Colleges of Supervisors ("Colleges") and the list of cross-border insurance and reinsurance groups for which a College is in place. Colleges were set up in order to improve supervision of cross-border insurance and reinsurance groups.

The focus of the Action Plan is the further development of consistent risk-based supervision according to Solvency II requirements. Among EIOPA's proposals for the Colleges are ones to reach a shared view on the risk exposure of the group and its major solo entities and to discuss and review progress and consistency of the implementation of the Solvency II preparatory guidelines at group and solo level.

The new list of the insurance groups for which a College is in place includes two new insurance groups, bringing the total figure for 2013 to 92.

The Action Plan for 2014/2015 for Colleges and the list of cross-border insurance and reinsurance groups for which a College is in place is available at the following links:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/EIOPA-13-424_AP__Colleges__2014_15_for_publication.pdf

https://eiopa.europa.eu/fileadmin/tx_dam/files/Colleges/EIOPA-BoS-13_156_List-groups-with-colleges_Sept_2013_final.pdf.

(ii) EIOPA Publishes Guidelines on Complaints Handling by Insurance Intermediaries and a Report on Best Practises by Insurance Intermediaries in Handling Complaints

On 27 November 2013, EIOPA published two short documents in respect of complaints-handling by insurance intermediaries, which are designed to be read in conjunction with one another.

The first document called the Guidelines on Complaints Handling by Insurance Intermediaries (the "Guidelines") apply to authorities competent for supervising complaints handling by insurance intermediaries. Those authorities are advised that when applying the Guidelines they should ensure a proportionate regime that takes into account the nature and size of insurance intermediary and whether the insurance intermediary takes up or pursues the activity of insurance mediation as a principal professional activity or on an ancillary basis.

The title of each Guideline is as follows:

- Guideline 1 - Ensuring the right institution deals with the complaint;
- Guideline 2 - Complaints management policy;
- Guideline 3 - Complaints management function;
- Guideline 4 - Registration (internal registration of complaints);
- Guideline 5 - Reporting (to the competent national authorities or ombudsman);
- Guideline 6 - Internal follow up of complaints handling;

- Guideline 7 - Provision of information (regarding the complaints handling process and further handling of the complaint); and
- Guideline 8 - Procedures for responding to complaints.

The Central Bank is required to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months of the date of publication.

The second document called the Report on Best Practises by Insurance Intermediaries in Handling Complaints (the "Report") contains examples of best practises for handling complaints by insurance intermediaries.

The Report complements the Guidelines regarding the:

- Content of a "complaints management policy";
- Endorsement of the complaints management policy;
- Organisation of the internal complaints management function;
- Registration (of complaints by an insurance intermediary); and
- Internal follow-up of complaints handling.

The Report also includes a useful "Decision tree" depicting the scope of the Guidelines.

The Guidelines and the Report may be accessed via the following links:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/guidelines/complaints_handling/EIOPA-BoS-13-164_Guidelines-on-complaints-handling-by-Insurance-Intermediaries.pdf

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-BoS-13-171_Best-Practices-Report-on-complaints-handling-by-Insurance-Intermediaries.pdf.

(iii) EIOPA Publishes Opinion on Beneficiary Protection Arrangements Regarding Life Insurance Contracts

On 27 November 2013, EIOPA published an Opinion on Beneficiary Protection Arrangements Regarding Life Insurance Contracts (the "Opinion"). The Opinion is addressed to national competent authorities ("NCAs") for the life insurance industry and aims to facilitate adequate measures to ensure the effective protection of beneficiaries of life insurance policies and to foster a consistent consumer protection approach throughout the European Union. The Opinion provides that life insurance contracts sometimes remain unclaimed because beneficiaries are not always aware of their status or the name of the insurance undertaking which holds the insurance contract.

The Opinion outlines the different beneficiary protection approaches already in place in some EU member states and categorises them into two groups:

- Those aimed at facilitating searches to find out if a deceased person was an insured person in a life insurance policy by beneficiaries themselves; and
- Those that impose special search obligations regarding potential insurance events (death of insured persons) on insurance undertakings.

The Opinion provides detail on the following arrangements that facilitate searches by beneficiaries:

- Registers that beneficiaries may consult to directly find out if the deceased person was an insured person in a life insurance policy; and
- Information hubs, where a search is facilitated by centralized information requests through some kind of platform (run by professional associations, notaries or an independent body).

With regard to searches by insurance undertakings, the Opinion provides that some Member States have provisions in place that grant insurance undertakings access to data in national population registers in order to ensure that insurance undertakings are informed about the occurrence of an insurance event. It is stated in the Opinion that there is sometimes an obligation to search this data.

EIOPA has recommended that NCAs, depending on their competence under national laws and taking into account cost implications, facilitate or assist with, or advise upon the establishment of a national beneficiary arrangement for life insurance policies, where no such arrangements are already in place. EIOPA states that it may at a later point in time monitor the establishment of any such new arrangements. EIOPA also advises that any arrangement should, where relevant, be subject to proper supervisory controls and that any arrangement should be based on a proper market analysis in compliance with data protection requirements, and consider cost implications.

In Ireland, the Unclaimed Life Assurance Policies Act 2003 requires insurance undertakings to keep a register of unclaimed life insurance policies. The Irish statutory framework does not however oblige life insurance undertakings to inform themselves of the death of insured persons. It remains to be seen whether the Central Bank will act in order to change the Irish framework in order to ensure that life insurance policies are paid out to the beneficiaries where due.

The Opinion may be accessed via the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/opinions/9.3._EIOPA-BoS-13-168_Life-Register-opinion.pdf.

(iv) EIOPA Publishes First "Consumer Trends Report"

On 11 November 2013, EIOPA published its first Consumer Trends Report (the "Report"). A revised Report was then published on 15 December 2013. The Report covers the year 2012 and was compiled from consumer trend information collected from national supervisory authorities ("NSAs").

It was not possible for EIOPA to establish an "informed pattern" in consumer trends because this is the first Report, but EIOPA states that from the qualitative information collected they could provide a high level indication of trends that NSAs have reported.

The following trends are among those identified in the Report:

- New or evolving channels for sales and marketing including social media, increasing advertising especially via the Internet, and the rise in the use of comparison websites;
- Issue of the lack of or misleading disclosure of information, and poor advice given to consumers, potentially leading to the misselling of various insurance products in particular life products such as unit-linked products;
- New or emerging products, for example cell phone insurance and packaged bank accounts bundled with the sale of insurance;
- Sale of complex products to retail investors and governance rules for the development of these products;
- Unilateral changes in the terms of the contracts by insurance undertakings and intermediaries; and
- Use of telematics (also known as 'black box' technology) by insurers in the sale of motor insurance.

EIOPA identified the above trends as 'top' trends which "may warrant further investigation, from a consumer protection perspective".

The revised Report may be accessed via the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Consumer_Trends_Report.pdf.

EMIR

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") entered into force on 16

August 2012. EMIR is supplemented by a series of Regulatory Technical Standards ("RTS") and Implementing Technical Standards ("TS") which came into effect on 15 March 2013.

EMIR is relevant to any entity that trades derivatives. An insurance company may be caught by EMIR if:

- It enters into an OTC derivative contract for its own account or if a third party (e.g. such as an investment manager) enters into an OTC derivative contract on its behalf;
- Policyholder funds are invested into an index linked product, which in turn enters directly into an OTC derivative contract;
- It has defined benefit pension schemes that use OTC derivatives;
- It is an annuity writer and makes use of interest rate swaps;
- It sells with profit policies which make use of OTC derivatives to hedge guarantees and options.

The main objective of EMIR is to mitigate the perceived risks associated with OTC derivative contracts by introducing the following obligations:

- **Risk mitigation requirements for non-centrally cleared trades** – which include (i) timely confirmations; (ii) portfolio reconciliation requirements; (iii) portfolio compression requirements; (iv) dispute resolution mechanisms; (v) daily marking to market; and (vi) collateral exchange and capital requirements. These requirements are all in effect save for (vi) above (collateral exchange and capital requirements) which is not expected to come into effect until 2015.

- **Clearing obligations relating to standard OTC derivatives** – whereby certain OTC derivative contracts will need to be cleared through an authorised Central Counterparty ("CCP"). It is expected that the clearing obligation will not take effect until 2015; and

- **Reporting to Trade Repositories** ("TRs") – Counterparties to all derivative contracts (OTC and exchange-traded) are required to report to a registered trade repository post-trade details of any derivative contract they have concluded and of any modification or termination of the contract. Intragroup transactions must also be reported in the same manner as any other trades.TRs will therefore centrally collect and maintain the records of derivatives and play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability. Where no contracts are concluded, modified or terminated, no reports are expected to be made apart from updates to valuations or collateral. It will be necessary for all counterparties to put processes in place to comply with the reporting obligation under EMIR by 12 February, 2014 at the latest.

Under EMIR, ESMA has direct responsibilities regarding the registration, supervision and recognition of TRs. In November 2013, the first TRs were registered by ESMA which means that the effective reporting date will commence on 12 February 2014. Currently there are six TRs registered by ESMA with other applications outstanding. As further TRs are registered, the list of TRs registered with ESMA will be updated on the ESMA website:

http://www.esma.europa.eu/page/Trade-repositories

The list of TRs currently registered by ESMA include:-

Trade Repository	**Derivative asset class**	**Effective date**
DTCC Derivatives Repository Ltd. (DDRL)	All asset classes	14 November 2013
Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW)	All asset classes	14 November 2013
Regis-TR S.A.	All asset classes	14 November 2013
UnaVista Limited	All asset classes	14 November 2013
CME Trade Repository Ltd. (CME TR)	All asset classes	5 December 2013
ICE Trade Vault Europe Ltd. (ICE TVEL)	Commodities, credit, equities, interest rates	5 December 2013

The minimum details of the data to be reported to a registered TR are set out in the Annexes of both the Commission Delegated Regulation (EU) No 148/2013 and Commission Implementing Regulation 1247/2012. It is clear that significant detail will need to be reported to a registered TR under two headings (i) counterparty data such as the legal entity identifier of each counterparty and the reporting entity (if different), the mark to market value of the contract, value of the collateral, collateral portfolio code, etc. and (ii) common data such as product identifier, underlying identifier, trade identifier, transaction reference number, etc. The details must be reported no later than the working day following the conclusion, modification or termination of the contract.

The reporting party may be the counterparty to the trade, or a third-party (such as a CCP or trading platform). However where the reporting obligation is delegated, the counterparty to the trade remains legally responsible for the reporting obligation. The counterparties and/or CCPs and any other entities reporting on their behalf need to agree on the report's content before submitting it to a registered TR given details of derivative contracts must be submitted “without duplication” according to EMIR. The ESMA Q&A on the Implementation of EMIR dated 11 November 2013 (“ESMA Q&A”) contains further information on this requirement and provides that “*The requirement to report without duplication means that each counterparty should ensure that there is only one report (excluding any subsequent modifications) produced by them (or on their behalf) for each* *trade that they carry out. Their counterparty may also be obliged to produce a separate report and this also does not count as duplication. Where two counterparties submit separate reports of the same trade, they should ensure that the common data are consistent across both reports*".

The reporting obligations will apply to derivative contracts that were outstanding on 16 August 2012 and to derivative contracts entered into on or after that date. In this regard Article 5 (3-4) of Commission Implementing Regulation 1247/2012 gives a further 90 days to report derivative contracts that were outstanding on 16 August 2012 and are still outstanding when the reporting obligation takes effect for that particular derivative class (i.e. 12 February 2014) which means such derivative contracts must be reported at the latest by 14 May 2014. Article 5 (3-4) of Commission Implementing Regulation 1247/2012 further provides that derivative contracts which are not outstanding on the date when the reporting obligation comes into force for that particular derivative class (i.e. 12 February 2014) do not need to be reported for 3 years from that date; (e.g. for contracts outstanding on 16 August 2012 but not outstanding on 12 February 2014). The ESMA Q&A clarifies that there is no need to report separately any life cycle events which occurred before the reporting start date. The contract can be reported in its final state or for contracts which are still outstanding, its state at the time the report is submitted.

Next Steps

It will be necessary for all counterparties to put processes in place to comply with the reporting obligation under EMIR by 12 February 2014 at the latest. Counterparties should ensure that identifiers required for reporting (including the legal entity identifier of the counterparty itself) are in place. Where counterparties propose to delegate the reporting, they should reach out to their counterparties or third parties providing such reporting services to determine whether they are willing to report on their behalf. In addition, counterparties should consider putting a written agreement in place with delegates as the counterparties will remain liable for any misreporting by delegates they rely on.

Update on IMD2

On 3 July 2012, as part of a wider legislative package focusing on consumer protection related issues, the European Commission (the 'Commission') announced a proposed reform of the Insurance Mediation Directive (2002/92/EC).

The aim of the proposed Insurance Mediation Directive II ('IMD2') is to improve consumer protection in the insurance sector through requirements for increased information provision and advice and by creating common standards for insurance sales. It also aims to improve the regulation of retail insurance sales and distribution practices across the single European market.

The proposals to amend the IMD2 (2002/92/EC) are due to be considered by the European Parliament in its plenary session to be held from 10 to 14 March 2014. The Parliament had previously indicated that this would take place in its plenary session to be held from 9 to 12 December 2013.

Market Abuse

The European Parliament voted on 10 September 2013 to formally endorse the political agreement on a Regulation on insider dealing and market manipulation (the 'Market Abuse Regulation'), subject to alignment with the final political agreement on MiFID II and final revisions to the text of the Market Abuse Regulation. The Market Abuse Regulation, together with a Directive on criminal sanctions for insider dealing and market manipulation, will replace the the Market Abuse Directive (2003/6/EC).

The new framework will:

- Prohibit market abuse occurring across commodity and related derivative markets;
- Explicitly ban the manipulation of benchmarks, such as LIBOR;
- Reinforce the investigative and sanctioning powers of regulators; and
- Extend the scope of the market abuse rules to include all financial instruments which are traded on organised platforms and over the counter.

Final adoption of the Market Abuse Regulation will only take place after political agreement on MiFID II has been reached, since the scope and other aspects of the Market Abuse Regulation depend on the final MiFID II text. The date as of which the Market Abuse Regulation will apply is to be aligned with that of MiFID II. The update on MiFID II is set out in the MiFID II section.

On 14 November 2013, ESMA published a discussion paper setting out its initial views on the implementing measures it will have to develop for the Market Abuse Regulation. The closing date for responses is Monday 27 January 2014. The discussion paper covers ten sections of the Market Abuse Regulation where ESMA is expected to provide input. These are:

- The exemption from market abuse prohibitions;
- Market soundings;
- Indicators and signals of market manipulation;
- Criteria to establish accepted market practises;
- Suspicious transactions and order reports;
- Public disclosure of inside information;

- Insider lists;
- Managers' transactions;
- Investment recommendations; and
- Reporting of violations and related procedures.

The discussion paper may be viewed at the following link:

http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf.

In addition, it was announced in December 2013 that political agreement had been reached between the European Council and Parliament on the proposed new Directive on criminal sanctions for insider dealing and market manipulation (the "proposed new Market Abuse Directive"). The European Council has stated that this agreement means that both the proposed new Market Abuse Directive and the Market Abuse Regulation may be adopted at first reading. The proposed new Market Abuse Directive sets out the market abuse criminal regime and will require national transposition and implementation. It requires member states to:

- Take the necessary measures to ensure that the criminal offences of insider dealing and market manipulation are subject to effective, proportionate and dissuasive criminal sanctions; and
- Impose criminal sanctions for inciting, aiding and abetting market abuse, as well as for attempts to commit such offences.

The European Parliament will consider the proposed new Market Abuse Directive during the 13 - 16 January 2014 plenary session.

The final compromise text of the proposed new Market Abuse Directive is included in a European Council Note, which may be accessed via the following link:

http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2017895%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst17%2Fst17895.en13.pdf.

MiFID

(i) Central Bank to Comply with ESMA's Guidelines on Remuneration Policies and Practises (MiFID)

The Central Bank announced on 25 November 2013 that it intends to comply with ESMA's Guidelines on Remuneration Policies and Practises (MiFID), (the "MiFID Remuneration Guidelines") and that it will notify ESMA accordingly. The MiFID Remuneration Guidelines will come into effect on 28 January 2014. All firms within the scope of the MiFID Remuneration Guidelines are expected to comply with the Guidelines from 28 January 2014 and to take the Guidelines into account when devising their remuneration arrangements.

The MiFID Remuneration Guidelines apply to investment firms and credit institutions that provide investment services. In addition, the MiFID Remuneration Guidelines will apply to UCITS management companies and external AIFMs when they are providing the investment service of individual portfolio management or non-core services within the meaning of Article 6(3)(a) and (b) of the UCITS Directive and Article 6(4)(a) and (b) of the AIFMD; i.e. the MiFID Remuneration Guidelines apply in relation to the provision of investment services listed in Section A of Annex I of the MiFID Directive and ancillary services listed in section B thereof.

The MiFID Remuneration Guidelines may be accessed at the following link:

http://www.esma.europa.eu/system/files/2013-606_final_report_guidelines_on_remuneration_policies_and_practices_mifid.pdf.

(ii) Central Bank Announces New Faster Authorisation Process for MiFID Investment Firms

Following a review of its authorisation process for the authorisation of Investment Firms under the Markets in Financial Instruments Directive ("MiFID") legislation, the Central Bank recently issued details of a more transparent efficient process which will go live on 8 January 2014. This followed an industry consultations process during October and November 2013.

Depending on the Central Bank's determination of the complexity of their business models, applicant investment firms will be streamed along two tracks with the aim that simpler applications will be processed within three months and more complex applications will be processed within six months. The Central Bank advises that within both streams, there are various checkpoints and timing deadlines for the exchange of correspondence.

The Central Bank has also tailored the Application Form for Authorisation as a MiFID Firm to match the risk of an applicant's business model or business strategy and has improved the quality of the MiFID Guidance Note for applicants. These revised documents may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Pages/authorisation.aspx.

MiFID II Update

The European Parliament has updated its legislative observatory pages and it now proposes to consider the MiFID II legislative proposals in its plenary session to be held on 25 February 2014 (previously this was due to be 9 - 12 December 2013). The likely implementation date of MiFID II will all depend on the outcome of the plenary session in February 2014 (assuming this date will not change again).

The draft MiFID II Legislation is divided into two parts;

(i) A revised Directive which will be an amendment and restatement of MiFID, (the "MiFID II Directive"); and

(ii) A new Regulation which will set out requirements relating to trade transparency and the mandatory trading of derivatives on organised venues, (the "MiFID II Regulation). It is hoped that the MiFID II Regulation will minimise any scope for divergences in the interpretation of the transparency and transaction reporting provisions.

The main elements of the MiFID II legislative proposals are as follows:

- Enhanced transparency - member states have decided to limit 'dark pool' trading and introduce a new trade transparency regime for non-equities markets;
- More robust and efficient market structures with the introduction of a new type of trading venue, the Organised Trading Facility;
- New safeguards to take account of technological developments such as algorithmic trading or high speed trading;
- Stronger investor protection;

- New rules on corporate governance and managers' responsibility; and

- Enhanced framework for derivatives markets.

Member states generally have two years to transpose a Directive once it enters into force (usually 20 days after its publication in the Official Journal of the European Union). The earliest possible implementation date for the MiFID II Directive is therefore early 2016. EU Regulations can take effect as soon as they are published by the Commission and are binding on all EU member states as soon as they become effective.

CRD IV

(i) Publication of Central Bank Guidance on the Implementation of its Discretions and Options under CRD IV

CRD IV represents the European Union's implementation of Basel III and comprises of two legislative instruments:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation EU No 648/2012 (the "CRD IV Regulation"); and

(ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (the "CRD IV Directive").

The CRD IV Directive entered into force 20 days after its publication in the Official Journal of the EU and therefore entered into force on the 17 July 2013. The CRD IV Directive requires national transposition and this is scheduled to occur via the European Union (Capital Requirements) Regulations 2014, ("S.I. XXX/2014"). The transposition of S.I. XXX2014 is a matter for the Department of Finance. The CRD IV Directive replaces Directive 2006/48/EC (as amended) and Directive 2006/49/EC (as amended) in their entirety.

The CRD IV Regulation will be directly applicable in all member states and will not require national implementing measures. The CRD IV Regulation is applicable from 1 January 2014. The CRD IV Regulation deals with the rules relating to capital, liquidity, leverage, credit operational and market risks, large exposure whereas the CRD IV Directive deals with the rules relating to access to corporate governance, remuneration policies, capital buffers and sanctions.

It is anticipated that S.I. XXX/2014 will repeal the following statutory instruments;

- European Communities (Capital Adequacy of Investment Firms) Regulations 2006 as amended (S.I. 660 of 2006);
- European Communities (Capital Adequacy of Credit Institutions) Regulation 2006 as amended (S.I. 661 of 2006);
- European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 as amended (S.I. 395 of 1992) and
- European Communities (Credit Institutions) (Consolidated Supervision) Regulation 2009 as amended (S.I. 475 of 2009).

A number of competent authority discretions are contained in the texts of both the CRD IV Regulation and the CRD IV Directive. In this regard the Central Bank published a consultation paper in September 2013, which indicated the Central Bank's proposed approach in relation to the provisions contained in CRD IV where the competent authority can or must exercise its discretion. On 24 December 2013, following the aforementioned consultation process, the Central Bank published guidance which specifies the Central Bank's requirements in relation to the implementation of competent authority discretions arising under CRD IV (the "Guidance"). The Guidance will therefore be of relevance to any firm which is caught by the provisions of CRD IV; namely credit institutions (i.e. banks) and certain investment firms (i.e. broker dealers, wealth managers, investment managers etc).

The Guidance deals with the following aspects of CRD IV;

- Transitional provisions of CRD IV;
- Competent authority discretions relating to the requirements relating to own funds;
- Competent authority discretions relating to the Standardised Approach to credit risk;
- Competent authority discretions relating to the Internal Ratings Based Approach;
- Competent authority discretions relating to specific liquidity discretions;
- Competent authority discretions arising within the sphere of corporate governance as well as an indication of the interplay between these discretions and the Central Bank's Corporate Governance Code for Credit Institutions and Insurance Undertakings (2013);
- Competent authority discretions with respect to leverage; and
- The Central Bank's policy with respect to investment firms which fall outside the definition of "investment firm" which is contained in the CRD IV Regulation.

The Guidance can be found at the following link:

http://www.centralbank.ie/library/Pages/LibraryDocuments.aspx.

(ii) Publication of Final Draft Regulatory Technical Standards on Criteria to Identify Categories of Staff whose Professional Activities Have a Material Impact on an Institution's Risk Profile under CRD IV

Article 92(2) of the CRD IV Directive provides that "*Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions shall comply with the following principles in a manner and to the extent that is appropriate to their size, internal organization and the nature, scope and complexity of their activities*". Article 94(2) of the CRD IV Directive provides that the European Banking Authority ("EBA") is mandated to "*develop draft regulatory technical standards with …. respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on the institution's risk profile as referred to in Article 92(2)*". On the 16 December 2013, the EBA published its final draft regulatory technical standards ("RTS") on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. The RTS set out qualitative and quantitative criteria to identify categories of staff who are deemed material risk takers for remuneration purposes in accordance with CRD IV. The EBA has submitted the RTS to the European Commission for adoption and they will enter into force after their publication in the Official Journal of the EU.

The RTS can be found at this link:

http://www.eba.europa.eu/documents/10180/526386/EBA-RTS-2013-11+(On+identified+staff).pdf.

Consumer Protection Cooperation Regulation

On 11 October 2013, the European Commission commenced a review the Consumer Protection Cooperation Regulation (2006/2004/EC) (the "CPC Regulation"). The review marks five years since the CPC Regulation began to regulate the area of cross border consumer protection.

The rules and conditions for the cooperation between the national enforcement authorities and the European Commission in the Consumer Protection Cooperation network are set out in the CPC Regulation. The CPC Regulation provides mechanisms for mutual assistance requests to address concrete breaches of EU legislation involving at least two EU countries. Under the Regulation a national competent authority can use its administrative powers to deal with infringements perpetrated by a company located in its territory but harming the collective interest of consumers in another EU country.

Issues dealt with by the CPC Regulation include:

- Unfair or misleading commercial practices;
- Unfair contract terms;
- Consumers' rights to information;
- Guarantee rights;
- Distance selling; and
- E-commerce.

In order to contribute to the review, an on-line questionnaire must be completed before 31 January 2014. The questionnaire is comprised of sections on:

- Key challenges and possibilities for improvement in the enforcement of consumer rights;
- Improving the methodology for identifying infringements;
- Enhancing the capacity of national competent authorities to perform consumer protection cooperation duties; and
- Tackling widespread infringements in the Single Market.

This consultation is open to stakeholders and all those with an interest in enforcement of consumer rights across national borders within the Single Market (e.g, member state consumer policy departments, enforcement officers, competent authorities, market regulators, consumers and consumer organisations, businesses and their associations, international enforcement organisations, academics). Respondents are requested to substantiate their answers in the response fields of the questionnaire, providing concrete examples and, where possible, relevant supporting data.

On the basis of the review, the European Commission will report on the functioning of the CPC Regulation and will present an outlook on appropriate steps to the European Parliament and the European Council in 2014.

Links to an offline copy of the questionnaire and to the on-line questionnaire are included below:

http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/cpc_review_201310_en.pdf http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/consumer_protection_cooperation_regulation_201310_en.htm

Credit Rating Agencies Regulation

On 17 December 2013, ESMA published a Q&A document on the implementation of Regulation (EC) No 1060/2009 of the European Parliament and of the Council (as last amended by Regulation (EU) No 462/2013) (the "CRA Regulation").

The purpose of the document is to provide clarity on the requirements and practice in the application of the CRA Regulation. It provides responses to questions posed by credit rating agencies ("CRAs") and market participants in relation to the practical application of the CRA Regulation.

Of particular interest are Questions 4 and 6, which deal with investments in CRAs and the prohibition of holding 5% or more of the capital or the voting rights of any other CRA, respectively.

Question 4 deals with Article 6a of the CRA Regulation, which provides specific rules regarding the relations between the CRAs and their shareholders or members. A shareholder or a member of a CRA registered in the EU should not simultaneously hold a participation of 5 % or more in two or more CRAs registered in the EU, unless the credit rating agencies concerned belong to the same group. Article 6a (1) of the CRA Regulation exempts from that rule holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance. The answer to question 4 provides that Article 6a of the CRA Regulation does not differentiate between EU and non-EU share-holders or members of a credit rating agency. Consequently, Article 6a of the CRA Regulation applies to any CRA shareholder or member of a credit rating agency registered in the EU holding 5% or more of the capital or the voting rights of another CRA registered in the EU regardless of where the shareholder is located.

Question 6 deals with the entry into force of the prohibition of holding 5% or more of the capital or the voting rights of any other CRA (Article 6a(1)(a) CRA). The answer provides that the obligation for CRAs to identify those shareholders holding at least 5% of either the capital or the voting rights entered into force on 20 June 2013, however for any shareholder or member of a CRA which on 15 November 2011 held 5% or more of the capital of more than one credit rating agency, the CRA prohibition under Article 6a(1)(a) applies from 21 June 2014. Consequently, those shareholders or members of a CRA holding 5% or more of the capital or the voting rights of more than one CRA after 15 November 2011 should immediately proceed to reduce (divest) their holding rights in one of the two CRAs under 5% of the capital or voting rights, so that, by 21 June 2014 there should not be any shareholder or member of a EU registered CRA holding 5% or more of the capital or the voting rights of more than one CRA "acquired" on or before 15 November 2011. This requirement does not apply to investments in other CRAs belonging to the same group of CRAs.

ESMA intends to continually edit and update this Q&A document as and when new questions are received. The document may be accessed via the following link:

http://www.esma.europa.eu/system/files/2013-1935.pdf.

Transparency Directive

The Central Bank has advised that a Directive to amend the Transparency Directive (the "Amending Directive") (Directive 2013/50/EU) entered into force on 27 November 2013. EU member states have two years from that date to implement any necessitated changes. The original Transparency Directive (2004/109/EC) was implemented into Irish law on 13 June 2007 by the Transparency (Directive 2004/109/EC) Regulations 2007 (the "Regulations").

The original Transparency Directive sought to enhance transparency in EU capital markets in order to improve investor protection and market efficiency. The Regulations established ongoing disclosure requirements for issuers with securities admitted to trading on a regulated market situated or operating within the EU. The Amending Directive aims to

- Make regulated markets more attractive for raising capital for small and medium-sized issuers by simplifying obligations;
- Improve legal clarity and effectiveness, particularly with respect to the disclosure of corporate ownership; and
- Ensure that the sanctions for breach of the transparency requirements are sufficiently dissuasive.

Among the changes introduced by the Amending Directive are the following:

- The requirement on issuers to produce interim management statements will be abolished;
- The publication deadline for half-yearly reports will be extended from two to three months after the end of the relevant reporting period; and
- The notification regime for major holdings of voting rights will be extended to include direct and indirect holdings of financial instruments having the same economic effect as the holding of shares, whether or not they confer a right of physical settlement.

Issuers with securities admitted to trading on a regulated market situated or operating within the EU should:

- Consider at an early stage the impact that the Amending Directive will have on their continuing obligation requirements; and
- Consider what amendments are necessary to current systems and processes to meet the requirements of the Amending Directive.

Proposed Directive on Improving the Gender Balance among NEDs of Listed Companies

On 20 November 2013, the European Parliament voted strongly in favour of adopting the proposed Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (the “Proposed Gender Balance Directive”).

The Proposed Gender Balance Directive will require publicly listed companies to meet a target of a 40% presence of women among non-executive directors (“NEDs”) on their boards by 2020. Small and medium-sized enterprises (companies with less than 250 employees and an annual worldwide turnover of less than €50 million) are excluded from the scope of the proposed directive. Similarly non-listed companies are not affected by the Proposed Gender Balance Directive.

The Proposed Gender Balance Directive contains a ‘procedural quota’ as opposed to a fixed quantitative one. The so-called procedural quota requires that companies with less than 40% of females among its NEDs make appointments to vacant positions on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, gender-neutral and unambiguous criteria. Priority is to be given to female applicants where qualifications are found to be equal.

Also included in the Proposed Gender Balance Directive is a ‘flexi quota’ which obliges listed companies to set themselves individual, self-regulatory targets regarding the representation of both sexes among executive directors which should be met by 1 January 2020 (1 January 2018 for public undertakings). Companies will have to report annually on the progress made.

Trilogue negotiations between the European Parliament, Council and Commission will continue on the Proposed Gender Balance Directive. An agreed text of the proposed Directive must be adopted by the European Parliament and by EU member states in the European Council before it becomes law. Ireland will then be given two years to transpose the Directive into Irish law.

Central Bank of Ireland

(i) Revised Corporate Governance Code for Credit Institutions and Insurance Undertakings

In December 2013, the Central Bank published its revised Corporate Governance Code for Credit Institutions and Insurance Undertakings (the "2013 Code"), which will apply to institutions (including reinsurers but excluding captives) with effect from 1 January 2015. Institutions will continue to be subject to the existing Code until 1 January 2015.

The 2013 Code will not apply to foreign incorporated subsidiaries of an Irish institution, however such institutions are encouraged to adopt equivalent good governance practices.

A summary of some of the key changes arising from the 2013 Code are set out below –

- Section 2 – Definitions - sets out a revised definition of a group director whereby a group director may be an executive director, a non-executive director or an independent non-executive director of an entity within the group;
- Section 7 - Composition of the Board - sets out that a director may attend a board meeting by way of videoconference or teleconference where physical presence is not possible due to the location of some directors. In addition, the review of directors who have been on the board for nine years or more is limited to independent non-executive directors, however if the decision is to retain such an independent non-executive director then that decision must be reviewed on an annual basis thereafter;
- Section 8 - Chairman - sets out that the Chairman shall not hold the position of Chairman or Chief Executive Officer ("CEO") or more than one institution at any one time and this obligation also prohibits the holding of a position of Chairman or CEO of a credit institution or insurance undertaking or reinsurance undertaking authorised outside of the State at the same time as the holding of the position of Chairman or CEO of an institution to which the 2013 Code applies. However, for institutions which are not designated as High Impact and which are subsidiaries of a group, the Chairman can hold both the position of Chairman of the institution (subject to the 2013 Code) and an institution (credit, insurance undertaking or reinsurance undertaking) authorised outside of the State provided he/she has sufficient time and subject to the prior approval of the Central Bank
- Section 9 - Chief Executive Officer - sets out that the CEO shall be appointed to the Board. In addition, the CEO can only hold the position of CEO of one institution at a time, unless the institution is classed as Medium Low or Low Impact then the CEO may hold up to two additional positions of CEO of an institution simultaneously provided such institutions are

also classed as Medium Low or Low Impact and subject to the prior approval of the Central Bank.

- Section 12 - Chief Risk Officer - sets out an obligation to appoint a Chief Risk Officer ("CRO"). Where an institution is not designated as High Impact then another pre-approval controlled function can also act as the CRO subject to the prior approval of the Central Bank. For High Impact institutions, the Chief Actuary may act as the CRO subject to the prior approval of the Central Bank and provided the nature, scale and complexity of the operation do not justify a dedicated exclusive CRO function. The Frequently Asked Questions ("FAQs") are also due to be amended to set out that institutions are required to have a CRO at local level, however in certain circumstances and depending on the nature, scale and complexity of an institution there may be scope for an institution to apply to the Central Bank for approval to allow a group CRO to act for the subsidiary.
- Section 14 - Appointments - creates a new obligation to establish a written policy on diversity with regard to the selection of persons for nomination to become members of the board;
- Section 16 - Meetings - sets out that the board shall meet at least four times per calendar year and at least once in every six month period;
- Section 19 - Committees of the Board - sets out that the audit committee and the risk committee shall have at least one shared member. The Central Bank proposes modifying the FAQs to provide clarity on cross committee membership where an institution relies on a group committee. In such an instance, a member of the board of directors of the subsidiary institution will be required to sit on the relevant group sub-committee(s).
- Section 22 - Audit Committee - sets out that the Audit Committee shall be composed of at least three members and at least one member shall have an appropriate qualification to demonstrate financial expertise;
- Section 23 - Risk Committee - sets out that the Chairman of the Risk Committee shall be a non-executive director or an independent non-executive director and the Risk Committee shall be composed of a majority of non-executive directors, independent non-executive directors or a combination of both. Similar to the Audit Committee, the Risk Committee will be required to have at least three members. In addition, the Risk Committee as a whole shall have relevant risk expertise;
- Section 26 - Compliance Statement - sets out that where an institution does not have a financial reporting period coinciding with the calendar year it may submit a compliance statement for the period of its financial year;
- Appendix 1 which deals with obligations on High Impact institutions sets out that the limit of three directorships extends to both credit institutions, insurance undertakings and reinsurance undertakings authorised in the State and outside of the State. The board shall be required to put in place a formal skills matrix to ensure that there is an appropriate skills mix across members of the board. New board members will be assessed against this skills matrix. In relation to meetings it sets out that the board shall meet at least six times per

calendar year and at least three times in every six month period. In addition it sets out that no one individual can hold the position of Chairman of the Audit Committee and Risk Committee simultaneously. It also sets out that the Audit Committee and the Risk Committee shall have at least one shared member and the Remuneration Committee and the Risk Committee shall have at least one share member.

- In respect of Appendix 1, the FAQs are due to be amended to reflect that a High Impact institution may reduce the annual frequency of its board meetings from 1 January 2015 in accordance with Appendix 1 of the 2013 Code provided the institution considers such a reduction is appropriate for the institution.
- Appendix 2 sets out additional corporate governance obligations on credit institutions that are deemed significant for the purposes of the Capital Requirements Directive.

The 2013 Code is available at the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP69%20Consultation%20on%20the%20Review%20of%20the%20Corporate%20Governance%20Code%20for%20Credit%20Institutions%20and%20Insurance%20Undertakings/2013%20Corporate%20Governance%20Code%20for%20Credit%20Institutions%20and%20Insurance%20Undertakings.pdf

(ii) Feedback Statement on the Consultation Paper on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings (CP69)

In December 2013 the Central Bank issued a Feedback Statement on the Consultation Paper on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings ("CP69"), alongside its revised Corporate Governance Code for Credit Institutions and Insurance Undertakings (the "2013 Code").

CP 69 was published on 1 August 2013. It sets out the amendments the Central Bank proposed to make to the Corporate Governance Code for Credit Institutions and Insurance Undertakings (the "Code") and sought comments on issues including board composition, board meeting requirements and the limits on the number of directorships permitted for directors of institutions.

The closing date for receipt of comments was 1 October 2013. The Central Bank received 26 responses, which can be broken down as follows:

- Industry bodies - 7
- Insurance firms - 6
- Legal/Accountancy firms - 5
- Individuals/other - 4

- Intermediary firms - 2
- Banks - 2

The individual responses are available on the Central Bank's website at the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?PagingID=1

The Feedback Statement provides that the Central Bank considered the responses received to CP 69 and where appropriate has taken on board specific feedback, particularly in relation to the development of Section 12 in relation to the Chief Risk Officer, the required minimum number of board meetings per year and the cross-memberships between key sub-committees of the board.

The Feedback Statement addresses the sections on which 10% or more respondents commented or where a comment was received that has resulted in a change to the text of the Code.

Appendix 1 to the Feedback Statement helpfully lists the sections which the Central Bank has amended in the 2013 Code, which will be effective from 1 January 2015.

The Feedback Statement may be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP69%20Consultation%20on%20the%20Review%20of%20the%20Corporate%20Governance%20Code%20for%20Credit%20Institutions%20and%20Insurance%20Undertakings/Feedback%20Statement%20to%20CP%2069.pdf.

(iii) Guidance on the Advertising Requirements of the Consumer Protection Code

On 18 October 2013, the Central Bank issued guidance for regulated entities on the practical application of the advertising requirements contained within the Consumer Protection Code 2012 (the "Code"). The Guidance on the Advertising Requirements of the Consumer Protection Code (the "Guidance") provides that the Central Bank took regulatory action in relation to 189 advertisements in 2012 and in relation to 178 advertisements by the end of September 2013.

The Guidance reminds regulated entities that the requirement to produce advertising that is 'clear, fair, accurate and not misleading' is one of the over-arching principles of the advertising requirements of the Code.

The Guidance covers:

- The scope of the advertising rules;

- Resources, systems and control checks;
- Outsourcing;
- Font size;
- Interest rates;
- The use of the regulatory disclosure statement;
- The use of the term ‘independent’;
- The “clear, fair, accurate and not misleading” requirement;
- Key information and qualifying criteria;
- Recommendations and commendations;
- The use of comparisons; and
- References to ‘free’.

The Guidance provides that the Code’s advertising rules apply to all forms of advertising, apart from sponsorship material, being material communicating a firm’s brand name but containing no language promoting specific products or services. The Guidance also reminds regulated entities that where interest rates are stated on their website, the website must be updated with immediate effect if interest rates are changed.

With regard to recommendations and commendations, the Guidance provides that in order for a recommendation or commendation to be considered to be complete and not misleading it should be attributed to the source and dated. Recommendations and commendations should be regularly reviewed and updated to ensure that the content remains accurate. The Guidance states that when using comparisons, regulated entities should opt for the most directly comparable product available.

A reminder on abbreviations is also included. The Central Bank provides that the regulatory disclosure statement must contain the regulated entity’s full legal name and the “Central Bank of Ireland”. Abbreviations are not permitted in the regulatory disclosure statement.

The Central Bank has suggested that regulated entities might wish to consider the Good Practice Guidance Tips Checklist (which is incorporated into the Guidance) as part of their advertising campaigns.

The Guidance may be accessed via the following link:

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Guidance%20on%20the%20Advertising%20Requirements%20of%20the%20Consumer%20Protection%20Code%202012.pdf.

(iv) Insurance Statistics for 2012

The Central Bank has published a summary of the Life Assurance and Non-Life Insurance returns made to the Central Bank pursuant to the EC (Life Assurance) Framework Regulations 1994 and the EC (Non-Life Insurance Accounts) Regulations 1995 in respect of business written during 2012.

The statistics show an increase in life assurance premiums between 2011 and 2012. Total life and industrial assurance premiums for undertakings with their head offices in Ireland increased from €24,873m in 2011 to €25,791m in 2012, while total life and industrial assurance premiums for undertakings with their head offices outside Ireland increased from €657m in 2011 to €1,109m in 2012. However, total premiums have yet to recover to the levels reached in 2010.

Non-life insurance premium income declined. The statistics show that in 2012 total Irish risk insurance business premium income amounted to €2,461m versus €2,748m in 2011.

The statistics are available at this link to the Central Bank's website:

http://www.centralbank.ie/publications/Documents/Insurance%20Statistics%202012.pdf.

(v) Themed Inspection into Sales Incentives Paid to Employees of Life Insurance Companies

On 27 November 2013, the Central Bank published the outcome of a themed inspection into sales incentives paid to direct employees of life insurance undertakings subject to the rules of the Consumer Protection Code (the "Themed Inspection").

The Central Bank identified a number of risks that may encourage short term sales behaviours that may not be in the best interest of consumers, including:

- Incentives paid fully or largely on the achievement of sales volumes or sales targets;
- Insufficient emphasis placed on linking quality measures and behaviours to incentive payments such as the individual's compliance record, the number of complaints upheld against them, performance management results, relevant education and training achievements or any measurement of customer satisfaction; and
- Insufficient use of penalties or deterrents against poor sales practices other than 'clawing back' the initial commission earned on the product sale.

The Central Bank also issued a letter to industry in relation to the outcome of the Themed Inspection. That letter sets out the Themed Inspection's key findings and expectations in relation to:

- Incentive schemes;
- Sales quality monitoring; and
- Conflicts of interest and governance.

The Central Bank has requested all insurance undertakings to immediately consider the risks and best practice identified and to review its relevant remuneration arrangements in light of these and take any remedial action necessary during 2014. The Central Bank has stated that it expects undertakings to make changes to sales quality monitoring and governance structures as soon as possible rather than waiting for a full review of any such scheme. The Central Bank will follow up on any specific issues identified directly with insurance undertakings inspected, and is extending its supervisory work to look closer at the sales incentives and remuneration practices within both banks and investment firms.

Insurance undertakings should consider the letter to industry and its appendix, in order to identify any gaps between its remuneration arrangements and the best practice outlined by the Central Bank. Any gaps found should be remedied as soon as possible, in light of the Central Bank's strong encouragement to do so.

The Information Release regarding the outcome of the Themed Inspection and the letter to industry may be accessed via the following links:

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

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Final%20Letter%20Template%2027%2011%2013.pdf.

(vi) Update on the Review of Payment Protection Insurance Sold

The Central Bank has provided an update on the current review of payment protection insurance sold from 1 July 2007 to 30 June 2012 (the "Update"). The Update provides that the review of over half of the approximately 350,000 policies captured by the review has now been carried out by the eleven firms involved, and that approximately one in five of policies reviewed so far have been found to have breached the Consumer Protection Code. It is estimated that €25 million is refundable to customers who were mis-sold payment protection insurance ("PPI"). Those institutions that mis-sold PPI are expected to have contacted affected consumers by the end of 2013. The Central Bank has stated that it will continue to monitor the firms involved to ensure that all of the reviews have been completed to its satisfaction by the end of 2013.

(vii) Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2013

On the 11 December 2013, the Financial Services Ombudsman Council published the Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2013 (the "Regulations"). The Regulations provide for a scheme of levies on regulated entities to fund the operation of the Financial Services Ombudsman's Bureau for the year ended 31 December 2014.

Under the Regulations:

a) Life assurance undertakings must pay a levy calculated on the basis of 0.0366% of its total net premium income written on Irish risk business for the year ending 31 December 2012, but excluding Class VII premium income. A minimum levy of €600 is payable by each life assurance undertaking;

b) Non-life insurance undertakings, with the exception of captive insurance undertakings must pay a levy calculated on the basis of 0.0607% of its total net premium income written on Irish risk business for the year ending 31 December 2012, except in respect of that portion of the undertaking's net premium income which is derived from accident and health insurance business. The levy in relation to that portion will be calculated in accordance with paragraph (c) below. A minimum levy of €600 is payable by each non-life insurance undertaking; and

c) Accident and health insurance undertakings (including non-life insurance undertakings providing accident and health insurance) must pay a levy calculated on the basis of a levy of 0.021% of its total net premium income derived from accident and health risk insurance business for the year ending 31 December 2012. A minimum levy of €600 is payable by each health insurance provider.

These levies are in respect of the insurance undertakings' liability for the year ended 31 December 2014.

(viii) Letter to Appointed Actuaries

On 12 December 2013, Mark Burke, Head of Life Insurance Supervision in the Central Bank, issued a letter to Appointed Actuaries. For the purpose of the end 2013 valuations of life insurance undertakings, the letter addresses:

1) The future investment rate specified at Section 7(8) of Annex IV to the European Communities (Life Assurance) Framework Regulations 1994;
2) The resilience test to be applied; and
3) The yields on variable interest investments to be used in valuing liabilities.

The letter may be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Letter%20to%20Appointed%20Actuaries%20December%202013.pdf.

(ix) Annual PCF Confirmation Return Reporting and Submission Dates

The Central Bank has advised that the reporting and submission dates for insurance undertakings' Annual PCF Confirmation Return are **31 December 2013** and **30 April 2014** respectively.

The Annual PCF Confirmation Return, which has recently been introduced by the Central Bank, is required to be filed by every Regulated Financial Service Provider ("RFSP") in respect of each active PCF holder within the RFSP, confirming that he/she is compliant with the Fitness and Probity Standards and continues to agree to abide by those Standards. The PCF Confirmation Return must be submitted through the Central Bank's ONR System. The requirement of the Board to confirm to the Central Bank upon the re-election/re-appointment of a PCF holder that his/her circumstances have not changed since pre-approval was granted, will also be covered by the completion of this return.

Guidance and a 'How To' guide on completing the return are available on the Central Bank website:

http://www.centralbank.ie/regulation/processes/fandp/Documents/Annual%20PCF%20Confirmation%20Guidance%20Instructions.pdf

http://www.centralbank.ie/regulation/processes/fandp/Documents/Quick%20Reference%20Guide%20-%20Annual%20PCF%20Confirmation.pdf.

(x) Inquiry Guidelines and Updated Outline of the Administrative Sanctions Procedure

On 6 November 2013, the Central Bank of Ireland issued Inquiry Guidelines and issued an updated version of the Outline of the Administrative Sanctions Procedure ("Outline"). The Inquiry Guidelines set out the procedures the Central Bank will ordinarily follow when holding an Inquiry under the Administrative Sanctions Procedure, while the Outline provides a general overview of the Administrative Sanctions Procedure.

The Inquiry Guidelines, published pursuant to Section 33BD of the Central Bank Act 1942 (the "1942 Act"), set out the procedures which the Central Bank ordinarily proposes to follow when holding an Inquiry under Part IIIC of the Act. The Central Bank advises that it may be necessary to depart from the Inquiry Guidelines in certain instances where compliance with the Inquiry Guidelines is not appropriate in the circumstances of the individual case.

The Inquiry Guidelines cover:

- The referral to an Inquiry;
- Preliminary Inquiry procedures;
- The Inquiry hearing; and
- The findings of Inquiry Members.
- When an Inquiry will be held in public and when it will be held in private;
- The burden of proof that will be applied is the balance of probabilities (the civil standard);
- Confirmation that a monetary penalty imposed cannot be such as to cause an entity to cease business or an individual to become bankrupt; and
- That a costs order will not be made in favour of a regulated entity if the Inquiry finds that suspected contraventions were not committed.

The Central Bank undertook a public consultation (CP65) on the Inquiry Guidelines in May 2013. Feedback on CP65 and the submissions made to the consultation may be accessed at the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?CPNumber=CP65.

The updated Outline replaces the previous Outline of the Administrative Sanctions Procedure which was published by the Central Bank in October 2005. The Guidelines to the Administrative Sanctions Procedure document, also published by the Central Bank in 2005, have been repealed by the issuance of the Outline and Inquiry Guidelines.

The Outline covers:

- Central Bank investigations;
- Settlement policy and procedure;
- A summary of Inquiry procedures; and
- Sanctions.

Where a concern arises that a prescribed contravention has been or is being committed by a regulated financial service provider, the Central Bank may investigate. A prescribed contravention is a breach of:

- A provision of legislation deemed a designated enactment, including any instrument made thereunder; or
- A code made, or a direction given, under such a provision; or
- Any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction; or
- Any obligation imposed on any financial service provider by the Central Bank under the 1942 Act.

The Central Bank may conduct an Inquiry under Part IIIC of the 1942 Act where it suspects on reasonable grounds that a prescribed contravention is being or has been committed.

The Central Bank may, either under a Settlement Agreement or following an Inquiry, impose one or more of the sanctions below on regulated financial service providers and on persons concerned in their management in respect of their participation in the prescribed contravention(s):

- A caution or reprimand;
- A direction to refund or withhold all or part of money charged or paid, or to be charged or paid, for the provision of financial services by a financial service provider;
- A direction to pay the Central Bank a monetary penalty (not exceeding the greater of €10,000,000 or 10% of prior year turnover where the financial service provider is a body corporate or an unincorporated body and not exceeding €1,000,000 where the financial service provider is a natural person and for persons concerned in the management of a financial service provider);
- Disqualification of a person from being concerned in the management of a regulated financial service provider;
- Revocation or suspension of an authorisation;
- A direction to the regulated financial service provider to cease committing the contravention; or
- A direction to pay the Central Bank all or part of the costs incurred by the Central Bank in the investigation of the matter and the holding an Inquiry.

The Outline introduces a new concept called the Early Settlement Discount Scheme. This scheme provides that the Central Bank may discount a monetary penalty by up to 30% where the regulated financial service provider is willing to enter into a Settlement Agreement within the timeframe indicated by the Central Bank in a letter offering the possibility of settlement. If the regulated financial service provider does not avail of the 30% discount during that timeframe, it is possible for them to receive a discount of up to 10% if they confirm their willingness to settle before the Central Bank issues a full notice of Inquiry.

Both the Inquiry Guidelines and the Outline of the Administrative Sanctions Procedure are available on the Central Bank website and may be accessed via the following link:

http://www.centralbank.ie/regulation/processes/EnfI/asp/Pages/ASP.aspx.

(xi) Industry Funding Levy – New Approach and Issuing of 2013 Levy Notices

The Central Bank has commenced issuing the 2013 industry funding levy notices, which are due and payable within 35 days of the date of the levy notice. If a regulated entity does not receive a levy notice, it is still legally obliged to pay the levy calculated in accordance with the appropriate industry funding category in the Central Bank Act 1942 (Section 32D) Regulations 2013 (the “2013 Industry Funding Regulations”). Any such financial service provider should request a copy levy notice by e-mail from funding@centralbank.ie.

The Central Bank has introduced a new approach to calculating the industry funding levy for the entities it regulates. This new approach was flagged in the CP61 consultation paper published in 2012 and the CP61 Feedback Statement published in 2013, where the Central Bank revealed its intention to introduce a revised calculation methodology whereby regulated financial service providers will pay a levy based on the activities in respect of which they have been authorised (industry funding category) and their PRISM impact categorisation. Those entities with the highest impact within an industry funding category will pay the highest levies while those with the lowest impact will pay the least.

The introduction of application fees has been deferred until 2014 to provide an opportunity for further consultation, the introduction of enabling primary legislation where required, and the establishment of service standards by the Central Bank.

The Central Bank’s Guide to the 2013 Industry Funding Regulations may be accessed at the following link:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202013.pdf.

(xii) Revised Protocol between the Central Bank and the Auditors of Regulated Financial Service Providers

On the 23 December 2013, the Central Bank published the revised Auditor Protocol (the "Protocol") between the Central Bank and auditors of Regulated Financial Service Providers following completion of the annual review process.

The Protocol provides a framework between the Central Bank and auditors for exchanging information on a timely basis with the aim of enhancing both the regulatory and statutory audit processes. The Protocol became effective in 2012 and applies to firms rated as High Impact under the PRISM regulatory risk model.

The following key changes have been made to the Protocol:

- The scope of the Protocol was extended to all meetings between auditors and the Central Bank including meetings in relation to non-High Impact firms; and
- The Protocol was updated to reflect recent changes in legislation in the form of the provision in Section 58 of the Central Bank (Supervision and Enforcement) Act, 2013 relating to the limitation of liability in the reporting of certain matters.

The revised Protocol became effective on 1 January 2014 and is available at the following link:

http://www.centralbank.ie/regulation/Documents/The%20Auditor%20Protocol.pdf.

(xiii) Fiona Muldoon, Director, Credit Institutions & Insurance Supervision, Resigns

Fiona Muldoon, Central Bank Director, with responsibility for Credit Institutions & Insurance Supervision, announced her resignation on 29 November 2013. She will remain in her post until 1 May 2014.

Pensions Update

EIOPA has established a public register of European occupational pension schemes. The register includes information about larger Irish pension schemes.

Under European law, the Pensions Board, like all other European pension regulators, is required to provide EIOPA with information which is necessary for EIOPA to carry out its duties which include the establishment of the above public register of institutions for occupational retirement provision. This means that since 31 December 2013 the following information on Irish occupational pension schemes (excluding small schemes – less than 100 active and deferred members) has been made public:

- Scheme's name and address; and
- Whether the scheme operates as a cross border scheme.

From 31 December 2014 this register will also include the same information on all remaining occupational schemes i.e. schemes with less than 100 active and deferred members.

The register may be viewed at the following link:

https://eiopa.europa.eu/publications/register-of-iorps/index.html.

Data Protection

A major overhaul of current EU data protection rules is currently being proposed by the European Commission. In this regard the European Commission presented in January 2012 a legislative package to improve data protection rights within the EU, (the "Data Protection Reform Package"). The Data Protection Reform Package comprises of a draft Directive and draft Regulation. The reforms are chiefly embodied in the draft Regulation.

The key proposals under the Data Protection Reform Package are:

- The right to be forgotten – whereby people can request that their data be deleted if they no longer want it to be processed and there are no legitimate reasons for holding such data;

- Explicit consent – whereby a company could process personal information only after obtaining clear permission from the person who could withdraw his/her consent at any time;

- Profiling (automated analysis of personal data to predict behaviour) – whereby this practice can only be carried out in certain limited circumstances;

- Data portability – whereby a person would have the right to request a copy of all his/her data in electronic form to be transferred to another provider;

- Clear and plain language – whereby data controllers should use clear, plain language adapted to the data subject; and

- Data Protection Officer – whereby companies employing at least 250 employees would be required to appoint a Data Protection Officer.

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE") voted to adopt its position with regards to the Data Protection Reform Package. This vote sets out the European Parliament's position for its negotiations with the European Council and the European Commission (known as the "trialogue" stage). The position adopted by the European Parliament paved the way for the European Council to agree its position in December 2013 and it was originally hoped that all parties could reach agreement before May 2014 (when the European Parliament elections are due to be held). However, the European Council failed to make any progress on its agreed position with regards to the draft Regulation when it met on Friday 6 December 2013. Consequently progress has lost momentum, however it is still hoped that the text of the draft Regulation will be agreed upon in 2014 in which case it would likely come into effect in 2016. Businesses and other organisations which think they might be impacted by the Data Protection Reform Package are, therefore, advised to keep a close eye on these developments.

Anti-Money Laundering/Counter-Terrorism Financing

(i) Fourth Money Laundering Directive

On the 15 November 2013, the Economic and Financial Affairs Council (the "Council") released a press release confirming its progress in reviewing the Commission's proposal published in February 2013 for a draft Fourth Money Laundering Directive (the "proposed Directive") and a draft Regulation on information accompanying transfers of funds (the "draft Regulation").

The proposed Directive, along with the draft Regulation, is aimed at ensuring consistency between EU anti-money laundering rules and the approach followed at international level. The proposed texts are designed to modify the current Third Money Laundering Directive (2005/60/EC) and implement recommendations issued in February 2012 by the Financial Action Task Force ("FATF"), a 34-member body established by the G7 and regarded as the global standard in combating money laundering and terrorist financing.

At the meeting in November 2013, the Council considered the following outstanding matters –

- Registries for information on beneficial ownership including where such information should be stored, who should have access to it and under what conditions;
- Supranational risk assessment including the role of the European supervisory authorities and of the outcome of risk assessment;

- Supranational monitoring of anti-money-laundering and counter-terrorist financing regimes and the mechanisms to ensure effective implementation; and
- Third country equivalence including how to modify the approach used to determine equivalence of anti-money laundering regimes in third countries.

The Council confirmed its intention to rapidly agree on a general approach to these matters, so that agreement can be reached with the European Parliament before the end of its current term (May 2014).

Based on Article 114 of the Treaty on the Functioning of the European Union, the proposed Directive requires a qualified majority for adoption by the Council, in agreement with the Parliament.

(ii) FATF Identifies Jurisdictions with Deficiencies in AML/CTF

The Financial Action Task Force ("FATF"), as part of its mandate in improving global AML/CFT compliance, has again identified countries with varying levels of compliance with international AML-CFT standards in its document dated 18 October 2013 called "Improving Global AML/CTF Compliance: On-going Process".

The Central Bank has reminded designated persons that they should have regard to this latest FATF document when performing a risk assessment of third countries.

The FATF document is available via the following link –

http://www.fatf-gafi.org/media/fatf/documents/statements/Compliance-18-October-2013.pdf.

(iii) IAIS Application Paper on Combating Money Laundering and Terrorist Financing

On 17 October 2013, the International Association of Insurance Supervisors ("IAIS") published an Application Paper on Combating Money Laundering and Terrorist Financing ("Application Paper"), the purpose of which is to provide information on how money laundering and terrorist financing can occur within the insurance sector, and on measures to mitigate the associated risks.

The following areas are covered in the Application Paper:

- Money laundering and terrorist financing vulnerabilities in insurance;
- The risk-based approach;
- Customer due diligence;

- Methods of identification and verification individuals, legal persons, companies, partnerships, other institutions and arrangements;
- High risk relationships;
- New or developing technologies; and
- Internal controls and foreign branches and subsidiaries.

Annex II of the Application Paper also includes a number of money laundering case studies covering life policies, non-life, intermediaries, collusion and reinsurance, while Annex III contains terrorist financing case studies.

The Application Paper may be accessed via the following link:

http://www.iaisweb.org/Application-papers-763.

Whistleblower Protection

The Protected Disclosures Bill 2013 (the "Bill") was published in July of 2013. This Bill proposes to provide for whistleblower protection in all sectors of the economy. 'Workers' are defined broadly to include employees, contractors, agency staff, trainees and home workers. It is proposed that 'workers' are to be provided with employment and other protections from penalisation for making 'protected disclosures' to certain persons.

An amendment was made to the Bill during the "Report Stage" of the legislative process to provide for the granting of interim relief on foot of a Circuit Court application. The amendment is designed to cater for a situation where a worker has been dismissed for making a protected disclosure and there is a lengthy delay before the unfair dismissal hearing. The Bill proposes to allow workers in that case to apply to the Circuit Court for relief, pending the hearing of their unfair dismissal claim. It is proposed to give the Circuit Court the power to order the employer to reinstate the employee, pending the full hearing of the issue. Compensation may be paid to the worker if an employer fails to comply with the order. This procedure is in line with best practise in other jurisdictions.

Companies Bill 2012 Update

The Companies Bill 2012 was published in December 2012 and is currently going through Dáil Éireann's legislative process. The Committee Stage was completed on 6 November 2013. The Bill will now move on to the Dáil's Report and Final Stages before the Seanad begins its consideration of the Companies Bill 2012.

The Office of the Director of Corporate Enforcement expects that the new Companies Act will commence in early 2015.

The Companies Registration Office ("CRO") is carrying out a survey to identify the best way of providing information to their stakeholders, and has asked stakeholders to complete a short survey to help them with this task.

The survey may be completed at the following link:

https://www.surveymonkey.com/s/66GBNDK.

Irish Taxation Update

The Finance (No. 2) Act 2013 has introduced an increase in the applicable rates for "chargeable events" for certain Irish assurance policyholders.

In relation to life assurance, the rates of exit tax applicable to certain Irish resident policyholders on income and gains from domestic life assurance policies under the gross roll-up regime have increased from 36% to 41%. This increase in rate will also apply to life assurance policies in other EU Member States, EEA States and OECD countries with which Ireland has a double taxation treaty.

The rate of tax applicable to a life assurance policy which is a Personal Portfolio Life Policy ("PPLP") is also to be increased, from 56% to 60% where correctly declared, and from 74% to 80% where not correctly declared. The corporate policyholder rate remains at 25%.

The above changes take effect from 1 January 2014.

FATCA

On 3 May 2013, the Revenue Commissioners released the Draft Financial Accounts Reporting Regulations 2013 together with supporting Draft Guidance Notes. Revised draft Regulations and Guidance Notes were expected to be issued in late 2013 but have not been released to date. Nonetheless, the revised draft Regulations and Guidance Notes are expected to be issued by the end of January 2014.

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This Insurance Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 December 2013, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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