Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 July – 30 September 2019

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INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

1 MIFID II - EUROPEAN DEVELOPMENTS

1.1 ESMA publishes latest Double Volume Cap Data

During the period 1 July 2019 to 30 September 2019, the European Securities and Markets Authority ("**ESMA**") published the updates of the latest set of data regarding the double volume cap ("**DVC**") under the Markets in Financial Instruments Directive II 2014/65/EU (the "**MiFID II Directive**") in the third quarter of 2019, specifically on the 5 July, 7 August and 6 September.

The MiFID II Directive introduced the DVC to limit the amount of dark trading in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC mechanism is set out in Article 5 of the MiFIR Regulation 600/2014/EU ("**MiFIR**") with the aim of limiting the trading under the reference price waiver (Article 4(1)(a) of MiFIR) and the negotiated transaction waiver for liquid instruments (Article 4(1)(b)(i) of MiFIR) in an equity instrument.

The data files published by ESMA provide the information needed for the implementation of the DVC mechanism. This includes the identifiers of the instruments and trading venues associated with a suspension of the relevant waivers, and the period in which the DVC will be applicable.

In the updates published on the 5 July, 7 August and 6 September, ESMA amended the suspension files relating to the DVC data which it had originally published on 7 August 2018. The suspension files, which are required to be published under MiFIR, contain a list of International Securities Identification Number ("**ISIN**"), which are suspended from trading. As of 6 September, there was a total of 303 instruments suspended.

The data files and the suspension files can be found here.

1.2 ESMA publishes updated results of the annual transparency calculations for equity and equity-like instruments

On 23 September 2019, ESMA issued a press release and the results of the annual transparency calculations for equity and equity-like instruments.

The results reflect late corrections of the underlying data used to perform the calculations by reporting entities. This is the data provided to the Financial Instruments Transparency System ("**FITRS**") by trading venues and approved publication arrangements ("**APAs**") in relation to the calendar year 2018.

ESMA had identified mis-reporting by trading venues in a statement published on 7 July 2019 and now wishes to clarify that from 30 September 2019. European trading venues will also be bound by the tick sizes from the ESMA publication of 23 September 2019 for third-country shares with an average daily number of transactions lower than one on the most relevant market in the European Union (the "**EU**") which are shares considered to be third-country shares for which the trading venue with the highest turnover is located in a country outside the EEA.

The updated results of the annual transparency calculations for equity and equity-like instruments will apply from 30 September 2019 until 31 March 2020. In the updated results, there are 1,480 liquid shares and 689 liquid equity-like instruments other than shares, subject to MiFID II/MiFIR transparency requirements.

A copy of the press release and the full list of equity and equity-like instruments can be accessed here. A copy of the statement published on 7 July 2019 can be accessed here.

1.3 ESMA updates Q&A on Investor Protection and Intermediaries Topics

During the period 1 July 2019 to 30 September 2019, ESMA published an updated version of its questions and answers publication "on MiFID II and MiFIR investor protection and intermediaries topics" ("**Q&As on Investor Protection and Intermediaries Topics**"). The only update to the Q&As on Investor Protection and Intermediaries Topics is as follows:

- **Question ID: Part 1 Best execution – Question 25** (as updated on 11 July 2019) which asks how should execution venues classify financial instruments, which do not have calibrated market sizes and are traded on an EU trading venue.

A copy of the Q&As on Investor Protection and Intermediaries Topics can be accessed here.

1.4 ESMA launches consultation on MiFID II reports on prices for trade data and consolidated tape for equities

On 12 July 2019, ESMA launched a consultation on the development in prices for pre- and post-trade data and on the post-trade consolidated tape for equity instruments.

ESMA's consultation forms part of the reviews required by MiFID II/MiFIR. It aims to gather further information on the factors behind the cost of market data and the consolidated tape ahead of ESMA's final report to the European Commission.

MiFID II/MiFIR has provided that it aims at ensuring fair access to and lowering the cost of market data and has established the legal framework for the provision of a consolidated tape. However, to date, no consolidated tape has emerged and, based on ESMA's analysis, it appears that MiFID II has so far not delivered on its objective to lower the prices of market data.

The consultation closed on 6 September 2019 and based on stakeholder feedback, ESMA will develop a final review report, which it intends to submit to the European Commission in December 2019.

A copy of the consultation can be accessed here.

1.5 EFAMA's responds to ESMAs consultation on the development in prices for pre- and post-trade data and on the post-trade consolidated tape for equity instruments

On 6 September 2019, EFAMA responded to ESMAs consultation on the development in prices for pre- and post-trade data and on the post-trade consolidated tape for equity instruments.

EFAMA in its response stated that it supports the intention expressed in MiFID II/MiFIR to lower the cost of market data and it values the work of ESMA in this consultation paper that aims to identify deficits in the application of existing regulation and to review tools that would have an impact on market data price developments such as the consolidated tape.

EFAMA suggests in its response that increasing supervision and enforcement of existing market data cost regulation by ESMA and national competent authorities ("**NCAs**") in the near term, would improve the completeness and accuracy of data and argues for changes to applicable supervisory laws during the mandate of the new European Commission that are needed to:

- Close gaps between existing legislation;
- Achieve a coherent regulation of financial market data cost; and
- Impose cost transparency rules across the different data providers.

In its response EFAMA provides that it understands that the European Commission and ESMA plan to mandate a consolidated tape as a catalyst for handling the market data issues besides resolving in general the lack of pre- and post-trade price transparency.

It also states that it is supportive of a single mandated consolidated tape overseen by ESMA and would expect that the first step to a consolidated tape providers' implementation is controlling the cost and access to market data.

In its response, EFAMA also states that it is cautions that the proposed changes could worsen the market data problems considerably if the consolidated tape providers' governance and operations requirements are not met, as data consumers will have to use inadequate consolidated tape providers' data and may be forced to continue to use the other market data sources as well.

EFAMA provides that authorities should bear in mind that consolidated tape will not solve the market data market failure.

A copy of the EFAMA response can be accessed here.

1.6 SMSG advice to ESMA on ESMA's Consultation Paper on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments

On 6 September 2019, the Securities and Markets Stakeholder Group (the "**SMSG**") responded to ESMA's consultation paper on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments to provide advice on the topic.

In its response, SMSG state that it is crucial to improve the quality and availability of market data and this is a primary consideration to ESMA and in its view, further standardisation would be valuable to address structural issues regarding the quality, re-liability and consistency of trade data.

The SMSG agrees that data from all execution venues (trading venues and APAs covering systematic internalisers ("**SIs**"), organised trading facilities ("**OTFs**") and over the counter ("**OTC**") should be available after a certain time period without charge. However, its members have different views on overall data charges and on the delay after which data should be available without charge. Several members would like to see the delay of 15 minutes for equity data substantially shortened.

SMSG considers that a low-cost tape of record covering all execution venues could meet needs of users, the market and the regulators.

SMSG advice's has 6 sections (set out below):

1.6.1 Prices for Pre- and Post-trade data;

1.6.2 The reasons for the lack of a consolidated tape for equity instruments;

1.6.3 Data quality and consistency;

1.6.4 Scope of a consolidated tape;

1.6.5 Use case for a consolidate tape; and

1.6.6 Brexit.

A copy of SMSG advice's can be accessed here.

1.7 EBF response to ESMAs consultation on the development in prices for pre- and post-trade data and on the post-trade consolidated tape for equity instruments

On 12 September 2019, the European Banking Federation ("**EBF**") responded to ESMAs consultation on the development in prices for pre- and post-trade data and on the post-trade consolidated tape for equity instruments.

The general comments from the response state that the EBF members share the view that the costs for market data have increased since MIFID II was implemented. Despite the Directive stressing that the costs of market data should be provided on a reasonable commercial basis, explicitly specified as being based on cost with a reasonable margin, the new requirement hasn't reached its objective.

The response provides that the overall market data costs and complexity have continued to increase whereas market data transparency and data quality have decreased. Furthermore that main cost driver for market data users is not so much an increase in already existing fees but the introduction of new fees related to multiple display-terminal, non-display applications, reporting and distribution licences, SIs market data fee, connectivity fees etc. in combination with unclear and complex market data policies and definitions and unreasonable audit procedures.

The EBF response can be accessed here.

1.8 ESMA updates Q&A on Market Structures Topics

On 12 July 2019, ESMA published an updated version of its questions and answers publication "On MiFID II and MiFIR market structures topics" (the "**Q&As on Market Structures Topics**"). The updated question is listed below:

- **Question ID: Part 4 The tick size regime – Question 11** (as updated on 12 July 2019) asks are periodic auctions systems subject to the tick size regime.

A copy of the Q&As on Market Structures Topics can be accessed here.

1.9 ESMA updates Q&A on Transparency Topics

During the period 1 July 2019 to 30 September 2019, ESMA published an updated version of its questions and answers publication "on MiFID II and MiFIR transparency topics" ("**Q&As on Transparency Topics**"). The updated questions are listed below:

- **Question ID: Part 4 Non-equity transparency - Question 18** (as updated on 12 July 2019) asks how should constant maturity swaps be treated pursuant to regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives ("**RTS 2**") for the purpose of determining whether they have a liquid market and, accordingly, the size specific to the financial instrument ("**SSTI**") and large in scale ("**LIS**") thresholds;

- **Question ID: Part 5 Pre-trade transparency waivers – Question 11** (as updated on 12 July 2019) asks under which conditions can pre-arranged transactions benefit from the hedging exemption under Article 8(1) of MiFIR; and

- **Question ID: Part 5 Pre-trade transparency waivers – Question 11a** (as updated on 12 July 2019) asks is the hedging exemption applicable to orders or quotes.

A copy of the Q&As on Transparency Topics can be accessed here.

1.10 ESMA publishes responses to its Call for evidence on position limits in commodity derivatives

On 12 July 2019, ESMA published the responses it received to its call for evidence on position limits and position management in commodity derivatives from 24 May 2019.

The call for evidence is in the context of the reviews that ESMA must perform under the MiFID II Directive. ESMA had sought stakeholders' input on the impact of position limits on liquidity,

market abuse and orderly pricing and settlement conditions in commodity derivatives markets.

A copy of the responses can be accessed here.

1.11 ESMA consults on Compliance Function Requirements

On 15 July 2019, ESMA issued a consultation paper and draft revised guidelines on certain aspects of the compliance function requirements under MiFID II (the "**Consultation Paper**").

The revised guidelines, when finalised, will replace the existing ESMA guidelines on certain aspects of the MiFID compliance function requirements and will take into account the new requirements under MiFID II along with the results of supervisory activities carried out by NCAs in relation to the application of the compliance function requirements.

The purpose of the guidelines is to enhance clarity and to foster convergence in the implementation of certain aspects of the MiFID II compliance function requirements. By helping to ensure that firms comply with the requirements, ESMA expects a corresponding strengthening of investor protection.

MiFID II reinforced the existing MiFID I requirements relating to compliance functions. ESMA therefore proposes clarifying, refining and supplementing the existing 2012 guidelines rather than replacing them.

The closing date set by ESMA for the receipt of responses to the Consultation Paper is 15 October 2019. ESMA has indicated that it aims to publish its final report and the final guidelines during the second quarter of 2020.

A copy of the Consultation Paper can be accessed here.

A Dillon Eustace article on the proposed changes can be accessed here.

1.12 ESMA reports on NCAs' use of sanctions under MiFID II

On 17 July 2019, ESMA published its first report concerning sanctions and measures imposed under MiFID II (the "**Report**") by NCAs.

NCAs are required under MiFID II to provide ESMA with aggregated information on all sanctions and measures imposed annually. MiFID II entered into force on 3 January 2018 (and later in some jurisdictions) ESMA have provided that data on sanctions and measures taken in 2018 is limited with only 117 sanctions and measures in 11 jurisdictions this does not allow for the observation of clear trends in the imposition of sanctions and measures to produce detailed statistics.

ESMA state that it will continue to publish an annual Report with the information on sanctions and measures imposed including criminal sanctions issued by NCAs via its website.

A copy of the Report can be accessed here.

1.13 ESMA launches call for evidence on certain investor protection topics

On 17 July 2019, ESMA published a call for evidence on certain investor protection topics, such as the impact of the inducements and costs and charges disclosure requirements under MiFID II.

The call for evidence also concerns collecting information on whether and how the application of the above rules varies across Member States.

Article 90 of the MiFID II Directive provides that the European Commission will, after consulting with ESMA, present a report to the European Parliament and the European Council on, among other things, the impact of the inducements disclosure requirements under the MiFID II Directive.

On 6 September 2019, the European Fund and Asset Management Association ("**EFAMA**") responded to ESMA's call for evidence on the impact of the inducements and costs and charges disclosure requirements under MiFID II.

In the response EFAMA stated that it strongly supports relevant and meaningful costs and charges disclosure and to achieve this, further adjustments to the MiFID II (and PRIIPs) disclosure framework are necessary. The two main comments made were:

- The current MiFID II disclosures on costs and charges are intended to assist retail clients make informed investment decisions. EFAMA provided that exactly the same disclosure rules apply for professional client and eligible counterparties. Which in turn provide essentially very little added value for such investors. EFAMA called for more flexibility. EFAMA stated that this can be achieved either by amending Article 50(1) of MiFID II Delegated Regulation to allow a limited application of the cost disclosure standards for professional clients and eligible counterparties, or by changing the current system from 'opt out' to an 'opt in'; and

- EFAMA provided that illustrations showing the cumulative impact of costs on return must learn from the current difficulties with the PRIIP KID in relation to performance scenarios and reduction-in-yield cost disclosures. EFAMA were of the view that these illustrations should frame the cumulative impact of costs over an assumed holding period on a yearly basis and use a net return assumption of zero (i.e. investors get back their original investment after one year) instead of complicated reduction-in-yield assumptions.

A copy of the call for evidence can be accessed here and EFAMA's response can be accessed here.

1.14 ESMA updates Q&A on MiFIR Data Reporting

On 29 July 2019, ESMA published an updated version of its questions and answers publication "On MiFIR Data Reporting" (the "**Q&As on MiFIR Data Reporting**"). Any update made to the Q&As on MiFIR Data Reporting is listed below:

- **Section 5 - Maturity Date, expiry date and termination date – Question 5** (as updated on 29 July 2019) asks what date should be populated in Field 24 (Expiry date) of RTS for the data standards and formats for financial instrument reference

data and technical measures in relation to arrangements to be made by ESMA and competent authorities ("**RTS 23**") for financial instruments without a defined expiry date (e.g. perpetual FX Rolling Spot Futures) for which the population of Field 24 is mandatory according to the classification of financial instruments ("**CFI**") validation rules.

A copy of the Q&As on MiFIR Data Reporting can be accessed here.

1.15 ESMA makes new bond liquidity data available

On 1 August 2019, ESMA published updated liquidity assessment data on its data register in respect of bonds which are subject to pre-trade and post trade requirements under the MiFID II Directive and MiFIR. The first communication was published on 27 September 2018.

ESMA's liquidity assessment for bonds is based on a quarterly assessment of quantitative liquidity criteria, which include the daily average trading activity (trades and notional amount) and percentage of days traded per quarter. ESMA is set to update its bond market liquidity assessments quarterly.

The transparency requirements for bonds deemed liquid will apply from 16 August 2019 until 15 November 2019.

The list of bonds assessed for liquidity are available through the register system which can be found here.

1.16 ESMA publishes data for the SIs calculations for equity, equity-like instruments and bonds

On 1 August 2019, ESMA published the SIs regime data for equity, equity-like instruments and bonds under the MiFID II Directive and MiFIR. ESMA published the total number of trades and total volume over the period January through to June 2019 for the purpose of the SI calculations for 22,961 equity and equity-like instruments and for 333,459 bonds.

The results are published only for instruments for which trading venues submitted data for at least 95% of all trading days over the 6 month observation period. The data publications also incorporate over the counter ("**OTC**") trading to the extent that it has been reported to ESMA. The publication includes data also for instruments which are no longer available for trading on EU trading venues from the end of December.

The publication of the data for the SI calculations for derivatives and other instruments has been delayed until 2020 at the latest while the SI assessment for those asset classes does not need to be performed until 2020.

Under Article 4(1)(20) of the MiFID II Directive, investment firms dealing on own account when executing client orders OTC on an organised, frequent systematic and substantial basis are subject to the rules applicable to a SI. The MiFID II Delegated Regulation specifies thresholds determining what constitutes frequent, systematic and substantial OTC trading. An investment firm must assess whether they are a SI in a specific instrument (such as equity and equity-like instruments or bonds) or for a class of instruments (derivatives, securitised derivatives and emission allowances) on a quarterly basis based on data provided relating to the previous six months.

For each specific instrument or class, an investment firm must compare the trading it undertakes on its own account to the total volume and number of transactions executed in the EU. If the investment firm exceeds the relevant thresholds it will be deemed a SI. ESMA has computed the total volume and number of transactions executed in the EU to help market participants carry out the test.

A copy of the press release and the relevant data can be accessed here.

1.17 IOSCO consults on co-ordinated universal time clock synchronisation of timestamped events

On 11 September 2019, the International Organization of Securities Commissions ("**IOSCO**") published a consultation paper recommending that trading venues and their participants synchronise the business clocks used to record the time and date of a reportable event with co-ordinated universal time.

The proposal follows a recommendation from an earlier IOSCO report published in April 2013 on the consideration of technological challenges to effective market surveillance as since 2013, various jurisdictions have implemented clock synchronisation requirements in light of increasingly fast trading speed (e.g., Article 50 of the MiFID Directive II stipulates that operators of trading venues and their members or participants are required to synchronise the clocks they use for any reportable events with co-ordinated universal time).

IOSCO is of the view that, given the widespread adoption of co-ordinated universal time within the financial industry, it should build on its earlier recommendation by stipulating that where jurisdictions have introduced a synchronisation requirement for business clocks, they should be synchronised to co-ordinated universal time.

The deadline for comments on the consultation is 13 November 2019. The press release can be accessed here and the consultation can be accessed here.

1.18 ESMA responds to European Commission on annual review of RTS 2

On 24 September 2019, ESMA responded to the European Commission by publishing a letter (dated 19 September 2019) regarding the annual review required under Article 17 of Commission Delegated Regulation (EU) 2017/583 on transparency requirements for non-equity instruments ("**RTS 2**") which requires ESMA to submit annual reports to the European Commission assessing the operation of some transparency thresholds for bonds and derivatives.

The letter outlines that ESMA and the European Commission agree that it is not advisable to perform the annual review of RTS 2 due to the remaining uncertainties around a potential no-deal Brexit. ESMA reiterated, however, its intention to perform the annual review of RTS 2 by 30 July 2020.

A copy of the letter can be accessed here.

1.19 ESMA updated its financial instrument reference database

On 24 September 2019, ESMA updated its Financial Instrument Reference Database ("**FIRDS**"). The FIRDS system was launched in July 2017 with the objective to support the requirements for reference data collection and publication introduced by the Market Abuse Regulation ("**MAR**") and MiFIR.

The updated version of the system includes XML schemas v1.1.0 and updates to the CFI validation rules.

The update can be accessed here.

1.20 ESMA publishes opinions on position limits under MiFID II

On 24 September 2019, ESMA published two opinions on position limits regarding certain commodity derivatives under the MiFID II Directive and MiFIR.

ESMA agreed with the proposed position limits regarding the commodity derivatives, noting that the limits were consistent with the objectives established under the MiFID II rules and the accompanying methodology developed for setting those limits.

The MiFID II Directive provides for all commodity derivatives traded on trading venues and economically equivalent OTC contracts to be subject to position limits. ESMA publishes a list of liquid commodity derivatives currently identified by the relevant NCAs in order to further assist market participants with the implementation of the MiFID II position limit framework.

The two opinions can be accessed here.

2 CAPITAL REQUIREMENTS DIRECTIVE IV / V / CRR / CRR II

2.1 EBA publishes updated ITS package for 2020 benchmarking exercise

On 16 July 2019, the European Banking Authority ("**EBA**") published an update to its Implementing Technical Standards ("**ITS**") on benchmarking of internal approaches. The ITS include all benchmarking portfolios that will be used for the 2020 benchmarking exercise.

In December 2018, the EBA published a consultation paper on revisions to the Implementing Regulation (EU) 2016/2070 to adjust the benchmarking portfolios and reporting requirements in the light of the 2020 benchmarking exercise.

The update includes changes and clarifications, which reflect the comments received during the consultation launched in December 2018. A number of changes reduce the reporting requirements, which seek to ensure a proportionate reporting burden and will increase stability.

The market risk benchmarking instruments have been updated and clarified and the overall composition of the portfolio has not been changed.

EBA has provided that revision of the benchmarking portfolios simplifies the exercise to a reduction in the number of portfolios that need to be reported and a closer alignment to the Common Reporting ("**COREP**") structure.

The EBA has submitted the proposed revisions of the ITS to the European Commission for endorsement.

A copy of the press release and the draft revisions to the ITS can be accessed here.

2.2 EBA releases a revised version of the Single Rulebook Q&As – CRR

During the period 1 April 2019 to 30 June 2019, the EBA updated its Single Rulebook Q&As – Regulation (EU) No. 575/2013 (the "**CRR Regulation**") (the "**CRR Q&As**"). We have set out below the updates made to the CRR Q&As in the last quarter:

Topic - Supervisory reporting

- **Question ID: 2015 2368** (as updated on 12 July 2019) this question relates to whether personal investment companies should be classified in financial reporting ("**FINREP**") as households or as other financial corporations;
- **Question ID: 2018 4276** (as updated on 12 July 2019) this question asks are development banks included in the definition of general government exposures and should it be reported in the template C33.00 General Government Exposures;
- **Question ID: 2019 4537** (as updated on 12 July 2019) this question asks is the control v6288_m consistent with the common reporting ("**COREP**") ITS;
- **Question ID: 2018 4208** (as updated on 12 July 2019) this question asks is it possible to include the positive impacts of operational risk errors in template C 17.00;
- **Question ID: 2018 4189** (as updated on 12 July 2019) this question asks in the template C5.01 validation rule v3689_s it states that R010 C040 cannot be negative, should R010 C040 be excluded from this validation rule;
- **Question ID: 2015 2412** (as updated on 26 July 2019) this question relates to the recovery rate of the foreclosure assets calculation to the Supervisory Benchmarking Process, Annex III, C 105.01;
- **Question ID: 2018 4282** (as updated on 6 September 2019) this question relates to counterparty classification of the European Stability Mechanism and the European Financial Stability Facility;
- **Question ID: 2018 4072** (as updated on 6 September 2019) this question relates to conditions for populating template C 33.00;
- **Question ID: 2018 3950** (as updated on 6 September 2019) this question relates to the incorrect validation rule v4456_m which is not correctly defined in the taxonomy 2.7;
- **Question ID: 2018 4318** (as updated on 6 September 2019) this question relates to the treatment of liquidity generated by the overnight maturity of Withdrawable Central Bank reserve in Counterbalancing Capacity panel of Template C66;

- **Question ID: 2018 4193** (as updated on 6 September 2019) this question asks in an environment of negative (money market indexing) interest rates C 66.00, that validation rule v5903_s may not be applicable;

- **Question ID: 2019 4549** (as updated on 6 September 2019) this question relates to the classifaction of multilateral development banks for the purpose of the reporting of the Additional Liquidity Monitoring Metrics;

- **Question ID: 2019 4550** (as updated on 6 September 2019) this question relates to the reporting of template C71.00 by a significant currency;

- **Question ID: 2018 3962** (as updated on 6 September 2019) this question relates to double counting of intra-group funding in C68.00; and

- **Question ID: 2017 3548** (as updated on 13 September 2019) this question asks if the validation rule e4898_n consistent with the Article 134(7) of the CRR.

Topic – Credit Risk

- **Question ID: 2018 3832** (as updated on 19 July 2019) this question asks for the purpose of the credit risk standard risk-weight attribution, can we consider that 1) an asset denominated in one currency and funded in a different currency subject to a FX Swap exchanging those two currencies is equivalent to 2) an asset denominated and funded in the same currency;

- **Question ID: 2017 3576** (as updated on 26 July 2019) this question relates to timely payment requirement for unfunded credit protection provided under credit risk insurance policies; and

- **Question ID: 2018 4207** (as updated on 26 July 2019) this question relates to the treatment of failed SRT under Traditional Securitisation.

Topic – Securitisation and Covered Bonds

- **Question ID: 2018 4025** (as updated on 19 July 2019) this question relates to synthetic securitization of undrawn revolving credit facilities.

Topic - Accounting and auditing

- **Question ID: 2018 3931** (as updated on 19 July 2019) this question relates to the interaction between Articles 473a and 127 of the CRR (risk weight factor for exposures in default under the standardised approach); and

- **Question ID: 2018 4391** (as updated on 9 August 2019) this question relates to the IFRS 9 Transitional Arrangements – on business combination between banks deciding to apply a static and dynamic phase in arrangements in Article 473a of CRR.

A copy of the CRR Q&A can be accessed here.

2.3 The Central Bank publishes guidance on Supervisory Disclosures

On 30 July 2019, the Central Bank updated its Rules and Guidance applicable to Supervisory Disclosures (the "**Rules and Guidance**"). The Central Bank has published the Rules and Guidance in compliance with the requirement set out in Article 143(1)(a) of the CRD IV Directive (2013/36/EU), where the relevant competent authority is required to publish the information on texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation.

The Rules and Guidance contains the various parts listed below:

- Part 1: Transposition of Directive 2013/36/EU;
- Part 2: Model approval;
- Part 3: Specialised lending exposures;
- Part 4: Credit risk mitigation;
- Part 5: Specific disclosure requirements applied to institutions;
- Part 6: Waivers for the application of prudential requirements;
- Part 7: Qualifying holdings in a credit institution; and
- Part 8: Regulatory and financial reporting.

The Rules and Guidance can be accessed here.

2.4 EBA clarify the prudential treatment applicable to own funds instruments at the end of the grandfathering period expiring on 31 December 2021

On 9 September 2019, the EBA announced that it intends to provide clarity on the appropriate treatment of 'legacy instruments' at the end of 2021, when the benefits of the grandfathering period will expire on 31 December 2021. The aim of the clarification is to preserve a consistent and high quality capital base for EU institutions under the CRR.

When the CRR entered into force, grandfathering provisions were introduced in order to ensure that institutions had sufficient time to meet the requirements set out by the new definition of own funds and certain capital instruments that at that time did not comply with the new definition of own funds were grandfathered for a transition period with the objective of phasing them out from own funds.

The EBA will also clarify the interaction with the new grandfathering provisions introduced by the recent Regulations ((EU) 2019/876 and (EU) 2019/876) and Directives ((EU) 2019/878 and (EU) 2019/879) (the "**Banking Package**") and the corresponding amendments to the CRR and the Bank Recovery and Resolution Directive ("**BRRD**"), where relevant for own funds instruments and eligible liabilities.

The EBA aims at communicating on the end-treatment of the 'legacy' grandfathered instruments by mid-2020 so that institutions can adequately prepare for the end of the grandfathering period.

A copy of the press release can be accessed here.

3 EUROPEAN MARKETS INFRASTRUCTURE REGULATION ("EMIR")

3.1 ESMA publishes updated EMIR Q&As

On 15 July 2019, ESMA published an updated version of its questions and answers on the implementation of Regulation (EU) 648/2012 ("**EMIR**") (the "**Q&As**"). The update comes as a result of Regulation (EU) 2019/834 (the "**EMIR Refit Regulation**") entering into force on 17 June 2019.

The following changes have been made to the Q&As:

- **General Question 1**: This Q&A is amended to clarify that fund managers will be legally responsible for reporting to Trade Repositories on behalf of the funds (applicable from 18 June 2020);
- **Q&A 7 on Trade Repositories**: This Q&A relates to reporting by CCPs and the duplication of reporting to Trade Repositories;
- **Q&A 13 on Trade Repositories**: This Q&A relates to the reporting of intragroup transactions;
- **Q&A 39 on Trade Repositories**: This Q&A relates to block trades and allocations;
- **Q&A 44 on Trade Repositories**: This Q&A relates to the transition to the revised technical standards on reporting; and
- **Q&A 52 on Trade Repositories**: This is a new Q&A which clarifies the notional amount field for credit index derivatives.

In addition, Q&As relating to frontloading or backloading (which are no longer relevant following the EMIR Refit Regulation) have been removed.

On 2 October 2019, ESMA published a further updated version of its Q&As on the implementation of EMIR.

The following changes have been made to the Q&As:

- **Q&A 2 on OTC**: This Q&A is amended to clarify when counterparties that start taking positions in over the counter ("**OTC**") derivatives need to notify the relevant national competent authorities and ESMA that they have exceeded the clearing thresholds for the first time;
- **Q&A 4 on OTC**: This Q&A is amended to clarify whether counterparties not subject to the clearing obligation should obtain representation from their counterparties;

- **Q&A 12 on OTC**: This Q&A is amended to clarify the status of entities established in a third country;

- **Q&A 14 on Trade Repositories**: This Q&A is amended to clarify whether all transactions within the same legal entity should be reported;

- **Q&A 17 on Trade Repositories**: This Q&A is amended to clarify position level reporting; and

- **Q&A 53 on Trade Repositories**: This is a new Q&A which clarifies the reporting of reference rates not included in Regulation (EU) 2017/105.

The updated Q&As can be accessed here.

3.2 ESMA issues public statement addressing derivatives trading obligation

On 12 July 2019, EMSA issued a public statement addressing concerns in relation to the scope of counterparties subject to the EMIR clearing obligation and the MiFIR derivatives trading obligation.

Regulation (EU) 2019/834 (the "**EMIR Refit Regulation**"), which came into force on 17 June 2019, provides for an exemption from the clearing obligation for small financial counterparties and certain non-financial counterparties, while still being subject to the trading obligation. ESMA addresses the challenges that this misalignment may create for counterparties which are exempt from the clearing obligation.

The statement provides that national competent authorities should not prioritise their supervisory actions in relation to the derivatives trading obligation towards counterparties exempted from the clearing obligation following the entry into force of the EMIR Refit Regulation.

The statement also clarifies the application date of the derivatives trading obligation for counterparties impacted by the modified application date of the clearing obligation under the EMIR Refit Regulation. The date of application of the derivatives trading obligation should correspond with the new date of application of the clearing obligation as amended by the EMIR Refit Regulation. This date of application should therefore be four months following the notification from financial counterparties to ESMA and national competent authorities as required under the EMIR Refit Regulation, rather than 21 June 2019.

ESMA's statement can be accessed here.

3.3 BCBS and IOSCO agree to one-year extension of the final implementation phase of the initial margin requirements for non-centrally cleared derivatives

On 23 July 2019, the Basel Committee on Banking Supervision ("**BCBS**") and IOSCO agreed to extend the final implementation of the initial margin requirements by one year. The extension will result in the final implementation phase taking place on 1 September 2021.

Covered entities with an aggregate average notional amount ("**AANA**") of non-centrally cleared derivatives greater than €8 billion will be subject to the initial margin requirements on 1 September 2021. To facilitate the extension, the BCBS and IOSCO have introduced an

additional implementation phase whereby as of 1 September 2020, covered entities with an AANA of non-centrally cleared derivatives greater than €50 billion will be subject to the initial margin requirements.

The BCBS and IOSCO have concluded that this extension will support the smooth implementation of the margin requirements and will avoid any market fragmentation. Covered entities are expected to comply with the requirements by the revised timeline and the BCBS and IOSCO strongly encourage market participants to make all relevant arrangements in a timely manner.

The updated version of the margin requirements reflects the extension to the implementation timeline. The BCBS and IOSCO will continue to monitor the progress in this area to ensure consistent implementation across products, jurisdictions and market participants.

3.4 FIA, ISDA and AFME publish joint response to ESMA Consultation Paper on aspects of Article 25 of EMIR

On 29 July 2019, FIA, ISDA and AFME (the "**Associations**") published a joint response to ESMA Consultation Paper on aspects of Article 25 of EMIR. According to Article 25(2) of EMIR, ESMA may only recognise a third country central counterparty ("**TC-CCP**") where certain conditions have been satisfied.

The Association's response can be accessed here.

4 ESMA, EBA AND ESAS

4.1 ESMA warns CFD providers on application of product intervention measures

On 12 July 2019, ESMA published a Statement (dated 11 July 2019) addressed to providers marketing, distributing or selling contracts for differences ("**CFDs**") to retail clients (the "**Statement**"). The Statement is in response to various practices and situations observed in the market, which raise concerns of non-compliance with the legal requirements applicable when providing services to retail clients and considers it necessary to remind CFD providers about some of the requirements connected with the offering of CFDs.

In the Statement, ESMA has identified the following undesirable practices to:

- **Professional clients on request**

  ESMA is aware that some CFD providers are advertising to retail clients the possibility to become professional clients on request and has advised Investment firms from refraining from implementing any form of practice that incentivises, induces or pressures an investor to request to be treated as a professional client. ESMA has stated that any form of promotional language in relation to the status of professional client will be seen as incentivising a retail client to request a professional client status.

- **Marketing, distribution or sale by third-country CFD-Providers**

  ESMA is also aware that some third-country firms are marketing CFDs that do not comply with ESMA's measures to retail clients in the EU through online advertising

and that EU firms are engaged in activities that are intended to circumvent ESMA's temporary product intervention measures.

ESMA has clarified in the Statement that in the absence of authorisation or registration in the EU in accordance with MiFIR or with the national third-country regimes in force in various EU Member States, third-country firms are only allowed to provide services to clients in the EU at the client's own exclusive initiative.

The Statement concludes that firms must ensure that they are compliant with all applicable legislative requirements and with the relevant product intervention decisions, taking into consideration clarifications provided in the relevant Q&As and the content of the Statement. It is provided that ESMA and the NCAs will continue to monitor compliance of CFD providers with the product intervention decisions.

A copy of the Statement can be accessed here.

4.2 ESMA publishes responses to survey on short-termism in the financial sector

On 5 September 2019, ESMA published the responses it received to a call for evidence on potential short-term pressures on corporations stemming from the financial sector.

ESMA is considering the impact of short-termism as part of its work on sustainable finance. The responses received by ESMA contribute to the analysis of potential sources of undue short-termism on corporations with an aim to identify areas in which existing rules may contribute to mitigating undue short-termism and areas where the rules may exacerbate short-term pressures.

ESMA aims to deliver a report to the European Commission by December 2019 based on its findings.

The response received by ESMA can be accessed here.

5 CENTRAL BANK OF IRELAND

5.1 Central Bank (Investment Market Conduct) Rules, consolidating Central Bank Transparency, Market Abuse and Prospectus requirements

On 15 July 2019, the Central Bank published a feedback statement on CP121 – Consultation on amendments to Central Bank Market Abuse and Transparency Rules and consolidation into Central Bank (Investment Market Conduct) Rules (the "**CP121**").

The Central Bank has also published a notification that no feedback has been received on CP127 - Consultation on amendments to Prospectus Rules and consolidation into Central Bank (Investment Market Conduct) Rules and the Central Bank has stated that it will not publish a feedback statement in relation to CP127.

On 21 July 2019, the Investment Market Conduct Rules came into force. The Investment Market Conduct Rules consolidate all Central Bank imposed primary market requirements into a single statutory instrument and are issued under Part 23 of the Companies Act 2014. On 22 July 2019, the Central Bank also issued guidance on the Market Abuse regulatory framework and the Transparency regulatory framework.

The Investment Market Conduct Rules repeals the Prospectus Rules, Transparency Rules and Market Abuse Rules that were previously issued by the Central Bank.

A copy of the feedback statement on CP121 can be accessed here, a copy of the notification on CP127 can be accessed here.

The Central Bank (Investment Market Conduct) Rules can be accessed here, with the guidance on the Market Abuse regulatory framework can accessed here and the Transparency regulatory framework can be accessed here.

5.2 Central Bank issues Prohibition Notice for failure to disclose information as part of the IQ process

On 27 September 2019, the Central Bank issued a Prohibition Notice prohibiting a gentleman performing a pre-approval controlled function ("**PCF**") from performing any controlled function in all regulated financial service providers for a period of 2 years. This is due to a failure by the PCF in question to provide full disclosure to the Central Bank in an individual questionnaire ("**IQ**") about the circumstances in which his previous employment had ceased.

The press release issued by the Central Bank can be accessed here.

6 SECURITISATION REGULATION

6.1 ESMA publishes updated Q&As, XML schema and validation rules to assist with securitisation reporting

On 17 July 2019, ESMA published several additional resources, namely, updated Q&As, XML scheme and validation rules, to assist market participants with the implementation of ESMA's draft technical standards on disclosure requirements under Regulation (EU) 2017/2402 (the "**Securitisation Regulation**").

The additional resources can be accessed here.

6.2 EBA updates Single Rulebook and Q&A tools to include Securitisation Regulation

On 2 September 2019, the European Banking Authority ("**EBA**") announced the update of its Interactive Single Rulebook and Q&A tools to include the "simple, transparent and standardised" ("**STS**") Securitisation Regulation.

The inclusion of the Securitisation Regulation allows users to view the EBA's final Technical Standards and Guidelines associated with the Securitisation Regulation. In addition, it allows users to submit any questions regarding the application of the Securitisation Regulation and the EBA's work related to it.

The Interactive Single Rulebook can be accessed here and the Q&A tools can be accessed here.

7 BENCHMARKS REGULATION

7.1 EMMI publish benchmark statement for administration of EURIBOR

On 17 July 2019, the European Money Markets Institute ("**EMMI**") published the benchmark statement for the administration of EURIBOR under Regulation (EU) 2016/1011 (the "**Benchmarks Regulation**").

The press release for the authorisation of EMMI can be accessed here and the benchmark statement can be accessed here.

7.2 ESMA updates its Q&As on Benchmarks Regulation

During the period 1 July to 30 September 2019, ESMA published an updated version of its "Q&As on the Benchmarks Regulation". The update can be summarised as follows:

- **Question 4.2**: This Q&A clarifies whether the short-term rate is based on contributions of input data as defined in Article 3(1)(8) of the Benchmarks Regulation;
- **Question 5.3**: This Q&A clarifies whether a calculation agent is to be considered a user of benchmarks if it is appointed by an issuer of securities;
- **Question 5.11**: This Q&A clarifies whether reference to an index in a bilateral agreement on interest to be paid on exchanged collateral under various over the counter ("**OTC**") derivatives amounts to "use of a benchmark"; and
- **Question 5.14**: This Q&A clarifies the scope of the definition of commodity benchmarks in the Benchmarks Regulation compared with the scope of that definition under MiFID II.

The updated Q&As can be accessed here.

8 PROSPECTUS REGULATION

8.1 ESMA publishes consultation paper on draft guidelines for disclosure requirements under the Prospectus Regulation

On 12 July 2019 ESMA published a consultation paper on the draft guidelines on disclosure requirements (the "**Guidelines**") under Regulation (EU) 2017/1129 (the "**Prospectus Regulation**"). This comes as a result of the Prospectus Regulation becoming fully applicable on 21 July 2019.

ESMA is welcoming feedback from concerned parties until 4 October 2019. ESMA expects to publish a final report containing a summary of all consultation responses and a final version of the guidelines in the second quarter of 2020.

The consultation paper can be accessed here.

8.2 ESMA publishes updated Q&As on the Prospectus Regulation

On 12 July 2019 ESMA published updated questions and answers ("**Q&As**") on the new Prospectus Regulation. The updated version of the Q&As includes 25 new Q&As. The update of the Q&As relate to:

- The application of Article 23(3) of the Prospectus Regulation in relation to issuers that qualify as financial intermediaries;
- Permitting an offer that was initially made using a base prospectus approved under the Prospectus Directive after the entry into application of the Prospectus Regulation; and
- Adding Q&As that originally had been published under the Prospectus Directive.

The updated Q&As can be accessed here.

8.3 The Minister for Finance signs the European Union (Prospectus) Regulations 2019 into law

On 19 July 2019, the Minister for Finance signed the European Union (Prospectus) Regulations 2019 (S.I. No. 380 of 2019) (the "**Irish Regulations**") into law. The Irish Regulations seek to modify the Irish prospectus framework to comply with the Prospectus Regulation.

A copy of the Department of Finance press release can be found here.

A copy of the Irish Regulations can be found here.

8.4 Central Bank publishes guidance on Prospectus Regulation

On 22 July 2019, the Central Bank issued Guidance on the Prospectus Regulatory Framework (the "**Guidance**").

The Guidance modifies earlier guidance issued by the Central Bank and reflects the entry into force of the Investment Market Conduct Rules.

The Guidance can be accessed here.

9 SUSTAINABLE FINANCE

9.1 European Commission technical expert group announces call for feedback on taxonomy for sustainable economic activities

On 4 July 2019, the European Commission announced that its technical expert group ("**TEG**") on sustainable finance has launched a call for feedback on taxonomy for environmentally-sustainable economic activities.

The TEG's technical report on taxonomy was published by the European Commission on 18 June 2019. The European Commission has asked stakeholders to comment on the proposed climate change mitigation activities, the climate change adaptation principles and criteria, the usability of the proposed taxonomy and its future development.

Submissions closed on 13 September 2019.

The call for feedback can be accessed here.

10 ANTI-MONEY LAUNDERING ("AML") / COUNTER-TERRORIST FINANCING ("CTF")

10.1 FATF publish Terrorist Financing Risk Assessment Guidance

On 5 July 2019, the Financial Action Task Force ("**FATF**") published its Terrorist Financing Risk Assessment Guidance (the "**Guidance**"). The Guidance aims to provide relevant information sources, practical examples and good approaches for concerned parties to consider when assessing terrorist financing risk at the jurisdiction level.

The main areas covered by the Guidance include:

- Examples of information sources when identifying TF threats and vulnerabilities;
- Key considerations when determining the relevant governance and scope of a risk assessment;
- Considerations for different country contexts such as lower capacity jurisdictions;
- Relevant information sources for concerned parties when identifying terrorist financing risks within high-risk sectors such as investments; and
- Practical examples to overcome information sharing challenges.

The Guidance can be accessed here.

10.2 European Parliament and European Commission make statements on final text of Directive (EU) 2019/1153

On 11 July 2019, the European Parliament and the European Commission made statements that were published in the Official Journal of the European Union on the final text of Directive (EU) 2019/1153 (the "**Directive**") laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. The Directive came into effect on 10 July 2019.

In their statement, the European Parliament highlighted their disappointment that Article 9 of the Directive does not include rules on precise deadlines and IT channels for the exchange of information between Financial Intelligence Units of separate Member States. Similarly the European Parliament regrets that the scope of this article was limited to crimes related to terrorism and not all serious criminal offences. The European Commission also stated their disappointment of these issues in their statement.

The statements can be accessed here and the Directive can be accessed here.

10.3 EBA publishes opinion inviting prudential supervisors to communicate with firms on AML and CTF risks

On 24 July 2019, the EBA published an opinion addressed to prudential supervisors to enhance communication with supervised firms about AML and CTF risks in prudential supervision.

The EBA invites prudential supervisors to exchange information with the management of supervised firms to ensure that prudential supervisors consider AML and CTF issues throughout the prudential supervisory process, while co-operating closely with AML and CTF supervisors.

The communication to firms should explain that money laundering and terrorist financing can have a significant adverse impact on a firm's safety and soundness. Prudential supervisors should be aware of, and act on, AML and CTF risks, which may pose prudential risks to the firms they supervise.

The EBA recommends that prudential supervisors alert supervised firms to the fact that the AML and CTF risks will be considered during the prudential supervisory process and in particular, but not solely as follows:

- At authorisation or when assessing the proposed acquisitions of qualifying holdings;
- As part of the ongoing supervision of a firm;
- In the context of the supervisory review and evaluation process; and
- When taking any administrative measures, imposing penalties or proceeding to a withdrawal of authorisation process, to address any potential weaknesses from a prudential perspective.

Prudential supervisors are invited to note in their communications the ongoing need for closer co-operation and increased information exchange between prudential supervisors and AML and CTF competent authorities, at home and abroad.

A copy of the opinion can be found here.

10.4 European Commission publishes package of materials assessing the European Union's AML and CMT framework

On 24 July 2019, the European Commission published a package of materials assessing the European Union's AML and CTF framework. The materials, addressed to the European Parliament and the Council of the European Union, aim to support the European Union and national authorities to better address money laundering and terrorist financing risks.

The Commission notes that the materials will serve as a basis for future policy choices on how to further strengthen AML and CTF framework of the European Union. The Commission will continue to support member states in this area, while seeking to address the remaining structural challenges.

The package of materials contains the following:

- Communication towards better implementation of the European Union's AML and CTF framework;
- Supranational risk assessment of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities;
- Report assessing recent alleged money laundering cases involving European Union credit institutions;
- Report assessing the framework for cooperation between Financial Intelligence Units;
- Report on the interconnection of national central bank account registries; and
- Related Q&As.

10.5 European Commission publishes staff working document supplementing the supranational risk assessment under MDL4

On 24 July 2019, the European Commission published a staff working document which supplements the recently published supranational risk assessment of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities under Directive (EU) 2015/849 ("**MLD4**").

The supranational risk assessment is designed to help member states address money laundering and terrorist financing risks related to specific products and services. The staff working document provides an overview of the methodology followed by the Commission to assess the money laundering and terrorist financing risks in the supranational risk assessment. It also provides additional information on the Commission's risk analysis for each of the sectors and products identified as potentially vulnerable to money laundering and terrorist financing risk.

The staff working document can be accessed here.

10.6 Establishment of the Central Register of Beneficial Ownership

On 29 July 2019, the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the "**RBO**") was established. Irish incorporated companies now have until 22 November 2019 to submit information on their beneficial owners to the RBO.

Every Irish company is required to maintain an internal register recording accurate and up-to-date information on its ultimate beneficial owners. The European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 (the "**Regulations**") provided for the establishment of the RBO and imposed a duty on companies to submit information on their beneficial ownership to the RBO.

The RBO is now open and all filings must be made online by companies (including investment funds established as public limited companies) by 22 November 2019. Newly incorporated companies are required to register their beneficial ownership details within five months of incorporation. Access to most of the data maintained on the central register will be made available to the general public.

Irish Collective Asset-management Vehicles ("**ICAVs**") are subject to the same requirements as Irish companies to maintain a beneficial ownership register and to file that information on a central register. However, a central register has not yet been established for ICAVs. Further regulations are required in order to establish the central register for trusts.

The RBO can be accessed here.

10.7 Central Bank publishes AML Guidelines

On 6 September 2019, the Central Bank published the final version of its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (the "**Guidelines**"). The Guidelines are designed to assist credit and financial institutions in understanding their obligations in relation to AML and CTF, following the implementation in Ireland of MLD4.

The Guidelines are largely consistent with the draft guidelines issued in December 2018 as part of the Central Bank's Consultation Paper CP128, with the majority of changes being for the purposes of clarification. The more material changes relate to the timing of customer due diligence, the approval of politically exposed persons and the training required to be put in place by firms.

The Guidelines can be accessed here.

In addition, please see the Dillon Eustace briefing paper entitled "Central Bank publishes AML Guidelines" (9 September 2019) which can be accessed here for further information.

10.8 FATF publishes new consolidated assessment ratings

For the period 1 July 2019 to 30 September 2019, the FATF updated the consolidated assessment ratings which provide a summary of: (1) the technical compliance; and (2) the effectiveness of the compliance, of the assessed parties against the 2012 FATF Recommendations on combating money laundering and the financing of terrorism & proliferation. FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed here and the full set of reports for each country can be accessed here.

11 DATA PROTECTION / GENERAL DATA PROTECTION REGULATION ("GDPR") / CYBER SECURITY

11.1 EDPB holds twelfth plenary session

On 9 and 10 July 2019, the European Data Protection Board ("**EDPB**") held its twelfth plenary session. Following this session the following were published:

- Recommendation 01/2019 on the draft list of the European Data Protection Supervisor ("**EDPS**") regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed here;

- Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment, which can be accessed here;

- Opinion 9/2019 on the Austrian data protection supervisory authority draft accreditation requirements for a code of conduct monitoring body pursuant to article 41 GDPR, which can be accessed here;

- Opinion 10/2019 on the draft list of the competent supervisory authority of Cyprus regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed here;

- Opinion 11/2019 on the draft list of the competent supervisory authority of the Czech Republic regarding the processing operations exempt from the requirement of a data protection impact assessment which can be accessed here;

- Opinion 12/2019 on the draft list of the competent supervisory authority of Spain regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed here;

- Opinion 13/2019 on the draft list of the competent supervisory authority of France regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed here; and

- Opinion 14/2019 on the draft Standard Contractual Clauses submitted by the supervisory authority of Denmark, which can be accessed here.

11.2 EDPB publishes annual report for 2018

On 16 July 2019, the EDPB published its annual report for 2018. The report, which covers the period from 25 May to 31 December 2018, provides an outline of the activities of the EDPB during this period, along with setting out its main objectives for 2019.

The annual report provides key statistics reflecting matters and proceedings initiated during this period in EEA countries, such as cross-border cases, one-stop-shop procedures, joint operations and binding decisions.

The EDPB endorsed and adopted twenty Guidelines which are contained in the annual report. In addition, 13 sub-groups have been established to assist the EDPB's performance.

The annual report can be accessed here.

11.3 Data Protection Commission publishes guidance note on GDPR breach notification requirements

On 12 August 2019, the Data Protection Commission ("**DPC**") published a guidance note on GDPR breach notifications to assist controllers in understanding and complying with their obligations regarding notification and communication requirements.

The guidance note covers two primary obligations of controllers:

- the notification of a personal data breach to the DPC; and
- the communication of that data breach to data subjects, where applicable.

The guidance note also highlights the accountability principle set out in GDPR and states that controllers must document any and all personal data breaches so as to demonstrate compliance with the data breach notification regime to the DPC.

The guidance note can be accessed here.

11.4 Data Protection Commission publishes guidance note on Data Protection Impact Assessments

On 26 September 2019, the Data Protection Commission published a guidance note on Data Protection Impact Assessments ("**DPIAs**"). The guidance note is designed to assist data controllers and data processors whose business activities may require them to carry out a DPIA.

The guidance note discusses when a DPIA is required and the benefits of conducting a DPIA. It also provides an overview of the steps involved in carrying out a DPIA.

The guidance note can be accessed here.

12 BREXIT

12.1 The Government of Ireland publishes a Contingency Action Plan update to prepare for the withdrawal of the United Kingdom from the European Union

On 9 July 2019, the Government of Ireland published an update on its Brexit Contingency Action Plan. The update expands on the Government's Action Plan published in December 2019 and outlines key preparations for the withdrawal of the United Kingdom from the European Union in the context of the extension of the Brexit Article 50 process to 31 October 2019.

The Government address the significant risk of a no-deal Brexit and the substantial challenges across various industry sectors that flow from this. The update provides a review of the extensive Irish and EU level work already done in this regard, and addresses the contingency measures still to be taken before 31 October.

The updated Action Plan can be accessed here.

12.2 The Government of Ireland approves draft legislation to facilitate transition of the Irish securities market

On 17 July 2019, the Government of Ireland approved draft legislation to facilitate the transition of the Irish securities market from its current settlement system based in the UK to the industry selected settlement system operated in Belgium. The approval of the draft bill is part of the longer term Government response to Brexit.

Brexit means that the Irish market will no longer be able to access the current UK settlement system. The Irish market selected Euroclear Bank in Belgium as its preferred long term

solution and the migration of securities from the UK system must be completed and fully operational by March 2021.

The Government's press release can be accessed here.

12.3 ISDA publishes updated Brexit FAQs

On 18 July 2019, the International Swaps and Derivatives Association ("**ISDA**") published an updated version of its Brexit frequently asked questions ("**FAQs**"). The FAQs aim to address possible outcomes for the derivatives market post-Brexit. The FAQs have been updated to reflect developments as at 30 June 2019 and deal with topics including the publication of a withdrawal agreement that is not yet ratified and the publication of final and draft UK legislation to cater for Brexit.

The FAQs can be accessed here.

12.4 European Commission publishes Communication on preparations for "no-deal" Brexit

On 4 September 2019, the European Commission published its sixth Communication on finalising preparations for the withdrawal of the UK from the European Union on 1 November 2019.

The Communication is accompanied by five legislative proposals. In the area of financial services, the Commission strongly encourages insurance firms and other financial service operators that have not yet done so to finalise their preparatory measures by 31 October 2019.

The Communication can be accessed here.

Dillon Eustace

30 September 2019

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