Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 July 2018 – 30 September 2018

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Table of Contents

INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

MiFID II - Irish Developments

(i) Central Bank publishes updated MiFID Reporting Requirements

On 13 September 2018, the Central Bank of Ireland ("**Central Bank**") published a revised edition of its 'Reporting Requirements for Markets in Financial Instruments Directive Investment Firms' ("**MiFID Reporting Requirements**") publication.

The MiFID Reporting Requirements set out a non-exhaustive list of the regulatory reports that MiFID firms are required to submit to the Central Bank on a periodic basis. The requirement to provide regulatory reports emanate from legislative and supplementary requirements, and as advised in writing to firms by the Central Bank from time to time.

The new edition of the relevant MiFID Reporting Requirements is available here.

(ii) Markets in Financial Instruments Bill 2018

The Markets in Financial Instruments Bill 2018 (the "**Bill**") which was first presented to the Dáil on 11 April 2018, is currently making its way to the second stage in the Seanad. The Bill seeks to, among other things, provide for criminal sanctions and penalties for infringements outlined under the MiFID II Directive (2014/65/EU) (the "**MiFID II Directive**") via primary legislation.

As it is currently drafted, the Bill provides that if a person is guilty of an offence under certain provisions of the European Union (Markets in Financial Instruments) Regulations 2017 (MiFID II) (S.I. No. 375 of 2017) (the "**MiFID II Regulations**"), such as operating without authorisation, the person could be liable on conviction on indictment to a maximum penalty of €10 million, imprisonment for ten years or both. This is a continuation of the criminal sanctions regime that existed in Irish law under the MiFID I regime.

The Bill also seeks to make an amendment to the definition of "long term contract" under the Financial Services and Pensions Ombudsman Act 2017, as well as seeking to amend certain definitions provided for under the Credit Reporting Act 2013 and the Financial Services and Pensions Ombudsman Act 2017.

MiFID II - European Developments

(i) ESMA updates Q&A on Investor Protection

On 12 July 2018, ESMA published an updated version of its questions and answers publication "on MiFID II and MiFIR investor protection and intermediaries topics" ("**Q&A on Investor Protection**"). The updates to the Q&A on Investor Protection are as follows:

- **Question ID: Part 7 – Question 12** (as updated on 12 July 2018) which relates to whether the provision of research services on a free trial period is acceptable when provided in relation to portfolio management or advice on an independent basis; and

- **Question ID: Part 13 – Question 3** (as updated on 12 July 2018) which asks for practical examples of investment products belonging to different categories for the purposes of the Reverse Solicitation Regime as is set out in Article 42 of the MiFID II Directive and Article 46 of MiFIR.

A copy of the updated Q&A on Investor Protection can be accessed here.

(ii) ESMA updates Q&A on Transparency Topics

On 12 July 2018, ESMA published an updated version of its questions and answers publication "on MiFID II and MiFIR transparency topics". The updated questions are listed below:

- **Question ID: Part 2 – Question 13** (as updated on 12 July 2018) which relates to the reporting requirements applicable when in the case of a corporate action with one traded ISIN is replaced with a new ISIN;

- **Question ID: Part 6 – Question 5** (as updated on 12 July 2018) which relates to how a new ISIN will be treated for the purposes of the DVC where the new ISIN replaces a traded ISIN in the case of a corporate action; and

- **Question ID: Part 7 – Question 1** (as updated on 12 July 2018) which relates to the timing at which ESMA will publish information about the total number and volume of transactions executed in the European Union and when will investment firms have to perform the systematic internaliser assessment.

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

(iii) ESMA publish Consultation Paper on Tick Size Regime

On the 13 July 2018, ESMA published a consultation paper entitled "Amendment to Commission Delegated Regulation (EU) 2017/588 (RTS 11)" ("**Consultation Paper**") which details potential amendments to the tick size regime under the MiFID II Directive. The Consultation Paper proposes to amend Delegated Regulation (EU) 2017/588 in order

to ensure that tick sizes applicable to third country instruments are adequate and appropriately calibrated.

The consultation process ended on 7 September 2018. Accordingly ESMA will now seek to submit a final report to the European Commission for approval.

A copy of the Consultation Paper can be found here.

(iv) ESMA publishes template for Systematic Internaliser Calculations

On 20 July 2018, ESMA published a press release which provided that a template was now available which will in turn be used to publish the first set of figures necessary for investment firms to determine whether or not they are systemic internalisers when dealing with specific financial instruments.

ESMA had announced on 12 July 2018 that it would publish the necessary European Union wide data, for the first time by 1 August 2018 for equity and equity-like and bond instruments. Publication of the data for systematic internaliser calculations for derivatives and other instruments is set to start on 1 February 2019.

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 systematic internaliser. The Commission Delegated Regulation (EU) No 2017/565 specifies thresholds determining what constitutes frequent, systematic and substantial OTC trading. An investment firm must assess whether they are a systematic internaliser 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 European Union. If the investment firm exceeds the relevant thresholds it will be deemed a systematic internaliser. ESMA computes the total volume and number of transactions executed in the European Union to help market participants carry out the test.

A copy of the press release can be accessed here and the template may be found here.

(v) ESMA issues follow-up Report to the Peer Review on MiFID suitability requirements

On 24 July 2018, ESMA issued a report "Follow-up Report to the Peer Review on MiFID Suitability Requirements" ("**Report**") which provides an update on the actions taken by certain National Competent Authorities ("**NCA**") since the publication of ESMA's MiFID Suitability Requirements Peer Review Report in April 2016.

In the Report it is stated by ESMA that investment firms' compliance with the MiFID suitability requirements is paramount to the overall protection of investors and that accordingly it is important that NCAs are effectively overseeing and enforcing the conduct of firms and converging around the key aspects of the MiFID suitability provisions.

Some of the following findings were set out in the Report:

- ESMA stated that compared to the original peer review many NCAs were able to show some improvements in the way they supervise the MiFID suitability requirements.

- The levels of enforcement action since the publication of the last peer report were mixed.

- Furthermore that certain NCAs who had lacked information on firms which operate on a branch basis (where the NCA is the host supervisor) or on a freedom to provide services basis (where the NCA is the home authority) made improvements to their supervisory model.

In the Report, ESMA provided that the new MiFID Regime remains one of the priority areas for ESMA's supervisory convergence work programme and reiterated the importance of continued and meaningful supervisory efforts to reach a high level of compliance with MiFID suitability requirements.

Furthermore ESMA pointed out that on 28 May 2018 it published guidelines on certain aspects of the MiFID II suitability requirements and that the guidelines issued, serve as an update to the relevant guidelines provided under MiFID I.

A copy of the Report can be viewed here.

(vi) ESMA updates Q&A on Temporary Product Intervention Measures

During the period 1 July 2018 – 30 September 2018, ESMA published an updated version of its questions and answers publication "on ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients'' ("**Q&A on Temporary Product Intervention Measures**"). The updates to the Q&A on Temporary Product Intervention Measures are as follows:

- **Question 5.10** (as updated on 30 July 2018) asks if turbo certificates are within the scope of ESMA's decision to temporarily restrict the marketing, distribution or sale of contracts for differences to retail clients (the "**CFD Decision**");

- **Question 5.11** (as updated on 30 July 2018) asks if structured financial products are within the scope of ESMA's decision to restrict the marketing, distribution or sale of binary options to retail clients or the CFD Decision; and

- **Question 5.12** (as updated on 28 September 2018) asks whether ESMA's product intervention measures in relation to CFDs will also apply to rolling spot forex.

A copy of the updated Q&A on Temporary Product Intervention Measures can be accessed here.

(vii) ESMA publishes updated MiFID II transitional transparency calculations

On 6 August 2018, ESMA published an updated version of its transparency calculations under the MiFID II Directive and MiFIR. Under the MiFID II Directive and MiFIR various transparency calculations are required to be performed in relation to equity and non-equity instruments. NCAs are responsible for performing the transparency calculations on an on-going basis.

The update to the transitional calculations relate to the following:

- Equity derivatives;
- Equity and equity-like instruments; and
- Tick size band assessment.

The new updates will apply from 13 August 2018, for more information on this subject please review section E of the FAQ document which is available here.

(viii) ESMA publishes new bond data subject to pre and post trade MIFIR Requirements

On 8 August 2018, 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.

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 list of bonds assessed for liquidity are set out in the ESMA's Financial Instruments Transparency System (FITRS) can be accessed here, this information will also be available through the Register system which can be found here.

(ix) ESMA to renew prohibition on binary options for retail clients

On 24 August 2018, ESMA published a press release stating that it has agreed to renew the prohibition of the marketing, distribution or sale of binary options to retail clients, which has been in effect since 2 July 2018 (the "**Press Release**"). The prohibition will be extended for

a further three months starting from 2 October, as ESMA continues to have investor protection concerns relating to the offering of such options to retail clients.

However, ESMA has agreed on the exclusion of a limited number of products from this prohibition as during its review of the intervention measure, certain binary options were found to have specific features that mitigate the risk of investor detriment. Accordingly the following types of binary option are excluded:

- A binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commissions, transaction fees and other related costs; and

- A binary option that meets cumulatively the following three conditions:

  (a) The term from issuance to maturity is at least ninety calendar days;

  (b) A prospectus has been drawn up and approved in accordance with the Prospectus Directive (2003/71/EC) and is available to the public; and

  (c) The binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commissions, transaction fees or other related charges.

Subsequently on 21 September 2018, ESMA published its decision to extend the prohibition of the marketing, distribution or sale of binary options to retail clients in the Official Journal of the European Union (ESMA Decision (EU) 2018/1466) (the "**Decision**"). The Decision was accordingly adopted under Article 40 of MiFIR and this action officially extends the prohibition until 1 January, 2019.

A copy of the Press Release can be accessed here and a copy of the Decision can be viewed here.

(x) ESMA publishes table of compliance regarding its Guidelines on product governance

On 31 August 2018, ESMA published a table which provides a list of the NCAs from the EEA Member States, which comply or intend to comply with ESMA's Guidelines on MiFID II Product Governance Requirements.

Under Article 16 of Regulation (EU) No 1095/2010 (the Regulation which established ESMA) it requires NCAs to inform ESMA whether they comply or intend to comply with each guideline or recommendation issued by ESMA.

A copy of the table can be found here.

(xi) European Commission publish communication on ESMA's proposed amendments to RTS1 and ESMA's response

On 3 September 2018, the European Commission (the "**Commission**") published a communication on ESMA's proposed amendments to the Delegated Regulation (EU) 2017/587 ("**RTS1**"), which supplements MiFIR (the "**Communication**"). The purpose of such a communication from the Commission, is to inform and explain certain European Union policies to the wider public.

The Communication is published in response to the proposed revised amendments to RTS1 which ESMA submitted to the Commission in March 2018 whereby ESMA sought to clarify that, for financial instruments subject to the minimum tick size regime, systematic internaliser quotes would only be considered to reflect prevailing market conditions where those quotes reflect the price increments applicable to European Union trading venues trading the same instruments. In the Communication, the Commission expressed its intention to endorse ESMA's proposed amendments to RTS1, provided that certain issues set out in the proposed amendments were revised. These concerns are set out in an annex to the Communication, which can be viewed here.

Following on from the Communication, on 21 September 2018, ESMA published an opinion in which it agreed to limit the application of tick sizes to quotes of systematic internalisers to shares and depositary receipts and also agreed to the other technical amendments proposed by the Commission set out in the Communication (the "**Opinion**").

A copy of the Communication can be viewed here and a copy of the Opinion, which contains a revised draft of RTS1 can be found here.

(xii) ESMA publishes latest Double Volume Cap Data

On 7 September 2018, ESMA published the latest set of data regarding the double volume cap ("**DVC**") under the MiFID II Directive. Updates were published by ESMA on the following dates in the third quarter of 2018: 6 July, 7 & 9 August and 7 September respectively.

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 Markets in Financial Instruments 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.

On 9 August 2018, ESMA amended the suspension file relating to the DVC data which it had originally published on 7 August. The suspension file, which is required under MiFIR, contains a list of International Securities Identification Numbers ("**ISIN**"), which are suspended from trading. The amendment to the suspension file removes a number of ISINs which had been mistakenly included on the list.

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

(xiii) ECJ Ruling on disclosure of information covered by professional secrecy under the MiFID and CRD IV Directives

On 13 September 2018, the Court of Justice of the European Union (the "**ECJ**") made a preliminary ruling in separate but joined cases before the Italian and Luxembourg courts. Both cases concerned the obligation to disclose information covered by professional secrecy. Case C-594/16 (Buccioni v Banca d'Italia and another) involved the interpretation of Article 53(1) of the CRD IV Directive (2013/36/EU) and Case C-358/16 (UBS Europe SE and others) involves the interpretation of Article 54 of the Markets in Financial Instruments Directive (2004/39/EC).

The duty of professional secrecy relates to the obligation on all official of European Union Institutions not to disclose information received in an official capacity. The ECJ in their decision held that national financial supervisory authorities may be obliged to disclose information covered by professional secrecy in order to protect the rights of the defence of the applicant or so that the information may be used in civil or commercial proceedings. However, the ECJ also held that such an obligation would be considered on a case by case basis, with regard being had to the opposing interests in each circumstance.

A copy of ECJ's decision in both cases can be viewed here (regarding Case C-594/16) and here (in relation to Case C-358/16).

(xiv) ESMA Compliance table on the ESMA Guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II

On 20 September 2018, ESMA published an updated compliance table (the "**Compliance Table"**) (the original Compliance Table was published on 19 October 2017) which provides a list of the NCAs which comply or intend to comply with ESMA's guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II (the "**the Guidelines**"), which has applied since 3 January 2018.

Under Article 16 of Regulation (EU) No 1095/2010 (the Regulation which established ESMA) it requires NCAs to inform ESMA whether they comply or intend to comply with each guideline or recommendation issued by ESMA.

A copy of the Compliance Table can be found here.

(xv) ESMA Compliance table on the ESMA Guidelines the management body of market operators and DRSPs under MiFID II

On 20 September 2018, ESMA published an updated compliance table (the "**Compliance Table"**) (the original Compliance Table was published on 26 March 2018) which provides a list of the NCAs which comply or intend to comply with ESMA's Guidelines the management body of market operators and Data Reporting Service Providers under MiFID II (the "**the Guidelines**"), which has applied since 3 January 2018.

A copy of the Compliance Table can be found here.

(xvi) ESMA updates Q&As on MiFIR Data Reporting

On 26 September 2018, ESMA published an updated version of its questions and answers publication "on MiFIR data reporting" ("**Q&A on MiFIR Data Reporting**"). The updates to the Q&A on MiFIR Data Reporting are as follows:

- **Question ID: Part 11 – Question 1** (as updated 26 September 2018) which asks in the case of securitised debt, what should be reported in Commission Delegated Regulation (EU) 2017/585 ("**RTS 23**") Annex Table 3 Field 14 (Total issued nominal amount) if the total nominal amount changes. This question also asks what should be reported in RTS 23 Annex Table 3 Field 17 (Nominal value per unit/minimum traded value) if nominal value per unit/minimum traded value changes;

- **Question ID: Part 15 – Question 1** (as updated 26 September 2018) which asks how should a transaction in an FX swap admitted to trading on a trading venue or traded on a trading venue be reported under Article 26 and Article 27 of MiFIR;

- **Question ID: Part 16 – Question 1** (as updated 26 September 2018) which asks what is the relationship between the interest rate term of the interest rate swap contract (tenor) field 41 of table 3 of RTS 23 and expiry date and the ISIN; and

- **Question ID: Part 18 – Question 1** (as updated 26 September 2018) asks how should a trading venue or systematic internaliser populate fields 8 to 11 in reports under Article 4 of Regulation No 596/2014 on market abuse ("**MAR**") and Article 27 of MiFIR.

The updated version of the Q&A on MiFIR Data Reporting can be accessed here.

(xvii) ESMA publishes letter to the European Commission on the MiFID II & MiFIR third-country regimes

On 26 September 2018, the Chair of ESMA sent a letter to the European Commission Vice President regarding some third-country firms' requirements under MiFID II and MiFIR in relation to investor protection and intermediaries. The letter highlights four issues, which relate to:

- Concerns regarding the MiFIR regime for third-country firms providing investment services and activities to eligible counterparties and to per se professional clients;

- Concerns regarding the MiFID II regime for third-country firms providing investment services and activities to retail and professional clients on request;

- Third-country firms providing investment services and activities at the exclusive initiative of clients (reverse solicitation); and

- Investment firms outsourcing critical or important functions other than those related to portfolio management to third-country providers.

It is set out in the letter that the issues set out above, were initially identified in the context of the discussion on the risk arising from Brexit, but now these issues are viewed more generally by ESMA and apply beyond the Brexit debate.

The letter is a follow-up to an ESMA letter (dated 20 November 2017) to the European Commission relating to concerns regarding the MiFID II and MiFIR third-country regime, third-country trading venues and the placing of trading screens in the European Union, and the lack of a temporary suspension regime for the trading obligation for derivatives.

A copy of the ESMA letter (dated 20 November 2017) can be accessed here and the ESMA letter (dated 26 September 2018) can be accessed here.

(xviii) ESMA issues details of two new data completeness indicators for trading venues

On 27 September 2018, ESMA issued a press release detailing two new data completeness indicators for trading venues detailing the delivery of double volume cap ("**DVC**") and bond liquidity data. The two new indicators are:

- **The Completeness Ratio**: provides information on the completeness of a particular trading venue taken in isolation, irrespective of the performance of other trading venues. The completeness ratio is calculated as the number of records received from a trading venue divided by the total number of records expected from that trading venue over the relevant period. One record corresponds to a bi-weekly report in the case of completeness for the DVC and to a one-day report in the case of completeness for bond liquidity; and

- **The Completeness Shortfall**: gives an indication of a trading venue's performance in terms of completeness compared to other trading venues. It reflects the percentage of missing data for which a particular trading venue is responsible.

The indicators will be published for the first time on 8 October for DVC data and by 1 November 2018 for bond liquidity data.

The relevant press release can be accessed here.

(xix) ESMA announces renewal of restriction on CFDs for further three months

On 28 September 2018, ESMA announced in a press release that it will renew the restriction on the marketing, distribution or sale of contracts for differences ("**CFDs**") to retail clients, that has been in effect since 1 August, and was set to run until 1 November 2018, for a further three-month period, as it considers that a significant investor protection concern related to the offer of CFDs to retail clients continues to exist.

Extending the restriction includes renewing the following:

- Leverage limits on the opening of a position by a retail client;
- A margin close out rule on a per account basis;
- Negative balance protection on a per account basis;
- A restriction on the incentives offered to trade CFDs; and
- A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts.

ESMA will adopt the renewal measure in the coming weeks. The measure will then be published in the Official Journal of the European Union.

A copy of the press release can be found here.

(xx) ECON reports on revised European Union prudential framework for investment firms

On 28 September 2018, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") published two reports relating to the prudential supervision of investment firms:

- A report on the European Commission's proposal for a regulation on the prudential supervision of investment firms, can be accessed here; and
- A report on the European Commission's proposal for a directive on the prudential supervision of investment firms, which would seek to amend the CRD IV Directive (*2013/36/EU*) and the MiFID II Directive (*2014/65/EU*), can be accessed here.

ECON voted to adopt its draft reports containing amendments to the text of the proposed legislation on 24 September 2018. The draft reports will now be considered by the European Parliament in plenary session.

Capital Requirements Directive IV / V / CRR / CRR II

(i) The European Central Bank publishes a draft Regulation on materiality threshold for credit obligations

On 3 July 2018, the European Central Bank ("**ECB**") published for consultation for a draft regulation, entitled Regulation (EU) [2018/XX] of the European Central Bank exercising a discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due (the "**Draft Regulation**") (please note that the consultation process closed on 17 August 2018). In addition the ECB has also published a cost benefit analysis and a FAQs to accompany the Draft Regulation.

The Draft Regulation aims to define the threshold against which the materiality of defaults in relation to obligors' total obligations and at the level of individual credit facilities is assessed. The ECB, as competent authority for carrying out micro prudential tasks within the Single Supervisory Mechanism ("**SSM**"), is required to define such a threshold under Article 178(2)(d) of the Capital Requirements Regulation ("**CRR**").

While the consultation process for the Draft Regulation closed on 17 August 2018, it is expected, once finalised, that it will apply from 31 December 2020.

A copy of the Draft Regulation can be accessed here, with the cost-benefit analysis found here and the FAQs here.

(ii) The European Central Bank publishes the Supervisory Review and Evaluation Process combined Methodology - 2018 edition

On 4 July 2018, the ECB published the 2018 edition of its Single Supervisory Mechanism, Less Significant Institutions ("**LSIs**") and the Supervisory Review and Evaluation Process ("**SREP**") (collectively the "**Methodology**").

Since 2015, the ECB and the NCAs have been working together to develop a common SREP methodology for LEIs, based on the EBA SREP Guidelines and building on the methodology for significant institutions ("**SIs**") and existing national SREP methodologies.

The stated goal of the SREP is to promote a resilient financial system as a prerequisite for a sustainable and sound financing of the economy. The SREP involves a comprehensive assessment of institutions' strategies, processes and risks, and takes a forward-looking view to determine how much capital each bank needs to cover its risks.

The NCAs which are in charge of supervising LEIs in the euro area, will implement a harmonised SREP methodology for the LSIs, starting in 2018 and rolling it out to all LSIs by 2020. Accordingly NCAs have the option to stagger the implementation of the common SREP methodology, applying it as a minimum to the high-priority LSIs in 2018 and accordingly it will have to be applied to all LSIs by 2020.

One of the intentions of the Methodology is to promote convergence in the way NCAs conduct the SREP, to support a minimum level of harmonisation and a continuum in the assessment of SIs and LSIs.

A copy of the Methodology can be found here.

(iii) The Central Bank issues CP123 relating to Materiality Thresholds for Credit Obligations Past Due

On 4 July 2018, the Central Bank issued the paper "Consultation on Implementation of Commission Delegated Regulation (EU) 2018/171 of 19 October 2017 – Materiality thresholds for credit obligations past due" ("**CP123**").

CP123 signals the Central Bank's proposed approach relating to the setting of the threshold for the materiality of a credit obligation past due as prescribed by the European Commission Delegated Regulation (EU) 2018/171 of 19 October 2017, supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards on materiality thresholds for credit obligations past due.

A copy of CP123 can be found here.

(iv) The European Parliament issues confirmation of ECON decisions to enter into trialogues regarding CRR II, CRD V, BRRD II and SRM II

On 5 July 2018, the European Parliament highlighted the decision of the Parliament's Economic and Monetary Affairs Committee ("**ECON**") to enter into trialogues regarding the following pieces of legislation:

- The European Commission's proposed CRR II Regulation (2016/0360(COD)) which contains revisions to the 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 (the "**CRR**") and the proposed CRD V Directive (2016/0364(COD)) which seeks to amend the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the "**CRD IV Directive**"); and

- The European Commission's proposed BRRD II Directive (2016/0362(COD)) which contains revisions to the directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms ("**BRRD**") and SRM II Regulation (2016/0361(COD)) which seeks to amend the Regulation (EU) No 806/2014 as regards loss-absorbing and recapitalisation capacity for credit institutions and investment firms (the "**SRM Regulation**").

The proposed CRR II Regulation (2016/0360(COD)) can be found here and the CRD V Directive (2016/0364(COD)) can be found here.

The proposed BRRD II Directive (2016/0362(COD)) can be found here and the SRM II Regulation (2016/0361(COD)) can be found here.

(v) Delegated Regulation (EU) 2018/959 relating to advanced measurement approaches for operational risk under CRR published

On 6 July 2018, the Commission Delegated Regulation (EU) 2018/959 of 14 March 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk (the "**Delegated Regulation**") was published in the Official Journal of the European Union and subsequently came into force on 26 July 2018.

The Delegated Regulation is based on the regulatory technical standards on the specification of the assessment methodology under which competent authorities permit institutions to use advanced measurement approaches ("**AMA**") for operational risk.

The Delegated Regulation is addressed to competent authorities and relates to the assessment of institutions that intend to use or are already using AMA.

A copy of the Delegated Regulation can be found here.

(vi) EBA issues final Guidelines for the Pillar 2 Regime

On 19 July 2018, the European Banking Authority ("**EBA**"), in relation to its Pillar 2 Roadmap, published three final reports containing revised guidelines which are intended to improve the understanding and compliance with the EBA's Supervisory Review and Examination Process ("**SREP**"). The three reviewed guidelines focus on stress testing, particularly in its use of setting Pillar 2 capital guidance, as well as the interest rate risk in the banking book.

The relevant guidelines are set out below, along with the corresponding link to each publication:

- Final Report on the Guidelines on the revised common procedures and methodologies for the SREP and supervisory stress testing (EBA/GL/2018/03) (link here);
- Revised final Guidelines on the management of interest rate risk arising from non-trading activities (EBA/GL/2018/02) (link here); and
- Revised final Guidelines on institutions' stress testing (EBA/GL/2018/04) (link here).

Both the EBA Guidelines on common procedures for SREP and on institutions' stress testing will replace the previous existing guidelines on 1 January 2019. In relation to the

EBA Guidelines on the management of interest rate risk from non-trading activities, this revised publication will replace the existing guidelines on 30 June 2019, with transitional arrangements in place for specific provisions until 31 December 2019.

(vii) EBA releases a revised version of the Single Rulebook Q&A - CRR

During the period 1 July 2018 to 30 September 2018, the EBA has updated its Single Rulebook Q&A – Regulation (EU) No. 575/2013 (CRR) (the "**CRR Q&A**"). The CRR Q&A contains Q&As relating to the provisions/requirements set out in the CRR. We have set out below the questions added to the CRR Q&A in the last quarter:

Topic - Supervisory Reporting

- Question ID: 2018_3754 (as updated on 27 July 2018): This question relates to the contents of the CVA Risk Template;

- Question ID: 2018_3748 (as updated on 27 July 2018): This question relates to how to report certain data under the Regulation (EU) No 680/2014 – ITS on supervisory reporting of institutions (as amended). Specifically relating to Annex II, section 3;

- Question ID: 2018_3596 (as updated on 27 July 2018): This question relates to how to report certain data under the Regulation (EU) No 680/2014 – ITS on supervisory reporting of institutions (as amended). Specifically relating to Annex III;

- Question ID: 2018_3592 (as updated on 27 July 2018): This question relates to how to report certain data under the Regulation (EU) No 680/2014 – ITS on supervisory reporting of institutions (as amended). Specifically under the Substitution Approach, how to report the covered part of the exposure where collateral is a covered bond; and

- Question ID: 2018_3770 (as updated on 27 July 2018): This question relates to how to report certain data under the Draft ITS on Supervisory Reporting of Institutions. Specifically relating to the validation rule v5548_h (FINREP template F 11.01 IFRS 9).

Topic - Credit Risk

- Question ID: 2017_3330 (as updated on 3 August 2018): This question relates to Regulation (EU) No 183/2014 – RTS for calculation of specific and general risk adjustments;

- Question ID: 2017_3422 (as updated on 3 August 2018): This questions asks should MiFID investment firms which are subject to the CRR calculate the credit risk requirements for the clients' funds (i.e. cash) deposited in a credit institution;

- Question ID: 2017_3173 (as updated on 21 September 2018): This question relates to the application of the definition of 'speculative immovable property financing' under the Standardised Approach; and

- Question ID: 2017_3270 (as updated on 21 September 2018): This question relates to Regulation (EU) No 183/2014 – RTS for calculation of specific and general risk adjustments. Specifically in relation to the appropriate risk weight for purchased defaulted assets.

Topic - Liquidity Risk

- Question ID: 2018_3741 (as updated on 3 August 2018): This question relates to Delegated Regulation (EU) 2015/61 – Delegated Regulation with regard to liquidity coverage requirement. Specifically in relation to the reporting of assets received as collateral in general collateral ("**GC**") pooling transactions;

- Question ID: 2018_3745 (as updated on 3 August 2018): This question relates to Delegated Regulation (EU) 2015/61 – Delegated Regulation with regard to liquidity coverage requirement. Specifically in relation to the reporting of cash flows related to collateral management transactions in which collateral to be delivered/received is defined using the participants netting exposure; and

- Question ID: 2018_4113 (as updated on 3 August 2018): This question relates to the Definition of 't' in the IFRS 9 Transitional arrangements. Specifically it asks how should "t" which is used in the formulas in paragraph 1 of Article 473a CRR be calculated.

Topic - Own Fund

- Question ID: 2018_3783 (as updated on 3 August 2018): This question relates to the calculation of the sf factor as per Article 473a(7)(b) of CRR;

- Question ID: 2018_3781 (as updated on 3 August 2018): This question relates to the computing the amounts mentioned in Article 473a(2)(b) CRR, in case of the credit-impaired financial assets measured at amortised cost; and

- Question ID: 2018_3784 (as updated on 24 August 2018): This question relates to the recalculation of thresholds of Article 48 CRR due to IFRS 9 transitional arrangements (Art. 473a).

An updated version of the CRR Q&A can be found here.

(viii) EBA updates report on monitoring of CET1 instruments issued by European Union institutions

On 20 July 2018, the EBA published an updated report on the monitoring of Common Equity Tier 1 ("**CET1**") instruments issued by European Union institutions (the "**Report**").

In accordance with Article 80 of the CRR, the EBA has been continually monitoring the quality of CET1 issuances in the European Union since 2013. In addition, in line with Article 26(3) of the CRR, it has regularly maintained and published a list of all forms of capital instruments in each Member State that qualify as CET1. To date, the EBA had first published a list of CET1 instruments in the European Union on 28 May 2014, as well as six subsequent updates. The latest revision, which accompanies the Report, is the seventh.

The Report provides external stakeholders with:

- Further guidance on the content and objectives of the CET1 list;
- Clarity on the consequences of the inclusion (or exclusion) of an instrument in (or from) the CET1 list; and
- Feedback on the outcome of the EBA monitoring work on CET1 issuances across the European Union.

The EBA intends to update the Report regularly and, when necessary, to explain how it takes into consideration new developments in CET1 issuances and market practices.

A copy of the Report can be found here and the CET1 list which accompanies the Report can be located on the following EBA webpage here.

(ix) The Central Bank publishes guidance on Supervisory Disclosures

On 25 July 2018, 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 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 are set out in the tables 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 found on the following Central Bank webpage here.

(x) EBA publishes updated Reporting Framework

On 9 August 2018, the EBA published version 2.8 of its Reporting Framework (the "**EBA Reporting Framework**") which will come into effect as of 31 December 2018.

The EBA's Reporting Framework provides an overview of the supervisory reporting requirements/data in place at the time of issue. The main changes to the EBA Reporting Framework are the following:

- Reporting requirements in respect of prudent valuation (COREP);
- Changes to existing reporting requirements regarding the information on the credit risk, securitisations and Pillar 2;
- Changed reporting requirements as specified in the ITS on supervisory benchmarking of internal models; and
- New reporting requirements as specified in the ITS on resolution reporting published in 04/2018.

The EBA Reporting Framework can be found here.

(xi) EBA launches consultations on supervisory reporting for the Reporting Framework 2.9 and prepares for its modular release

On 28 August 2018, the EBA stated that it is preparing for a release of the next version of the Reporting Framework, version 2.9. In respect of this version, the EBA intends to move to a new modular release, where different modules of the Reporting Framework will be published and applied at different points in time.

The EBA expect that this approach will provide institutions with as much implementation time as possible under the circumstances. Furthermore a forward schedule published by the EBA will assist users in planning for the staged release of the technical components.

On the same date, the EBA also launched three public consultations on amendments to the Commission Implementing Regulation (EU/680/2014) laying down implementing technical standards with regard to supervisory reporting of institutions ("**ITS**"). The proposed amendments seek to keep reporting requirements in line with changes in the Regulatory Framework. The consultation papers cover the following amendments to the ITS:

- Amendments to Annex I and II which relate to the new securitisation framework setting out the common reporting ("**COREP**") framework concerning capital requirements, own funds and liquidity reporting. The consultation paper on COREP is accessible here;

- Amendments to Annexes III, IV and V relate to the financial reporting ("**FINREP**") framework and is concerned with non-performing and forborne exposures reporting, P&L and IFRS16. The consultation paper on FINREP is accessible here; and

- Amendments to Annexes XXIV and XXV relate to the liquidity coverage requirement ("**LCR**") and reflect the amendments to the Commission Delegated Regulation on the LCR adopted by the Commission in July 2018. The consultation paper on the LCR is accessible here.

The deadline for responses on the COREP and FINREP consultation papers is 27 November 2018 with a final draft to be submitted to the European Commission in the third quarter of 2019. The first reference date for reporting in accordance with the revised ITS, is expected to be 31 March 2020, with an implementation period of approximately one year.

The deadline for responses on the LCR consultation paper is 26 October 2018 with a final draft to be submitted to the European Commission once the non-objection period to the Commission Delegated Regulation has passed.

Following the receipt of responses to the consultation papers, the EBA will hold public hearings starting 3 October through to 10 October 2018.

(xii) Central Bank maintains one percent increase in countercyclical capital buffer for July 2019

On 27 September 2018, the Central Bank announced its decision to maintain the countercyclical capital buffer ("**CCyB**") rate on Irish exposures at one percent as originally announced on 5 July 2018. This CCyB rate increase will take effect from 5 July 2019.

By way of background, the CCyB is a time varying capital requirement which applies to credit institutions and investment firms. The CCyB aims to promote a sustainable provision of credit to the economy by making the financial system more resilient and less pro-cyclical. By increasing regulatory capital requirements in line with the cyclical systemic risk environment, the CCyB looks to ensure additional capital is in place to absorb losses when risks materialise.

The Central Bank is the designated authority for setting the CCyB rate in Ireland and as such sets the rate for Irish exposures on a quarterly basis. In arriving at the decision to increase the rate of CCyB, the Central Bank took the following factors into consideration:

- The strengthening of credit growth in various sub-categories of the non-financial private sector – The Central Bank stated that overall non-financial private sector credit has maintained its trajectory towards positive growth, with year-on-year rates of change being close to 0 percent. However large differences are seen across sub-categories, with the strengthening of credit growth evident in a number of sectors.

- The upward trajectory of the national-specific credit gap – The Central Bank have stated that updated estimates of an alternative credit gap estimated by the Central Bank point to the gap being closed at a quicker pace. This alternative gap measure is estimated to have been just below zero in the first quarter of 2018 (the latest available data point) and is expected to become positive during the course of 2018.

- An acceleration in new mortgage lending – The Central Bank have stated that new lending, and in particular mortgage lending, has been increasing rapidly for a period of time now, recovering strongly from initial subdued levels.

- An elevated risk of residential property misalignment – The Central Bank have set out that growth in residential property prices has moderated in recent months, albeit year-on-year growth rates remain in double digits.

- The high level of indebtedness of Irish households and the overhang of NPLs on banks' balance sheets – The Central Bank have stated that these two factors are sources of vulnerability within the domestic macro-financial environment.

The Central Bank published a CCyB rate announcement, the relevant publication can be found here.

International Organisation of Securities Commissions ("**IOSCO**")

(i) Consultation Report on commodity storage and delivery infrastructures

On 4 July 2018, a consultation report titled 'Commodity Storage and Delivery Infrastructures: Good or Sound Practices' ("**Consultation Report**") was published by the International Organisation of Securities Commissions ("**IOSCO**").

The Consultation Report provides guidance to storage infrastructures (such as warehouses, sheds, tanks) and their overseeing bodies (such as central counterparties and market authorities) on the detection of issues that could affect pricing in the commodity derivatives market.

The recommended practices are predominantly in five areas namely: oversight, transparency, conflicts of interest, fees and incentives and operations.

The Consultation Report provides that the market for physical storage and the delivery of commodities will be more transparent and robust if the practices in the Consultation Report are implemented and encourages storage infrastructures and their overseeing bodies to do so.

The deadline for comments on the Consultation Report was 29 August 2018.

A copy of the Consultation Report is available here.

(ii) IOSCO and CPMI publish report on implementation of principles for financial market infrastructures

On 23 July 2018, IOSCO and the Committee on Payments and Market Infrastructures ("**CPMI**") published their fifth update to the Level 1 assessment report on the implementation monitoring of the Principles for financial market infrastructures ("**PFMI**").

The PFMI are international standards for payment, clearing and settlement systems, and trade repositories. They are designed to ensure that the infrastructure supporting global financial markets is robust and well placed to withstand financial shocks.

This report focuses on Level 1 assessments where jurisdictions are asked to self-assess their progress in completing the process of adopting the legislation, regulations and other policies that will enable them to implement the PFMI. This report states that 21 out of the 28 participating jurisdictions have reported that they have completed the process of adopting measures that will enable them to implement the PFMI for all FMI types and the remaining seven jurisdictions continue to make progress. The report states that this is a clear expression of the support that jurisdictions are giving towards achieving the objectives of the PFMI.

The report may be accessed here.

(iii) IOSCO publishes report on mechanisms used by trading venues to manage extreme volatility and preserve orderly trading

On 1 August 2018, the IOSCO published its final report on mechanisms used by trading venues to manage extreme volatility and preserve orderly trading. This report follows the publication of a Consultation Report in March 2018.

This report addresses, in particular, the use of automated mechanisms in trading venues to constrain trading during extreme volatility events, the process for establishing and monitoring the thresholds and reference prices used in these mechanisms, information dissemination to regulatory authorities and the public and communication between trading venues.

The report seeks to assist trading venues and regulatory authorities regarding the decision-making processes surrounding the implementation, operation and monitoring of volatility control mechanisms, and sets out a number of recommendations to this end.

The report may be accessed here.

(iv) CPMI and IOSCO meet with Industry Leaders on cyber resilience

On 14 September 2018, the CPMI and IOSCO reported a round-table meeting with key industry executives on cyber security and the resilience of financial market infrastructures ("**FMI**").

The CPMI and IOSCO issued guidance on cyber-resilience in June 2016 with a view to providing supplemental detail to the preparations and measures that FMIs should undertake to enhance their cyber resilience capabilities.

The meeting which focused on cross-border actions, reflects continued efforts to collaborate with industry leaders in preparing responses to cyber-incidents.

The press release is accessible here and the CPMI/IOSCO's 2016 guidance on cyber-resilience can be accessed here.

(v) IOSCO develops toolkit to assist investors in OTC leveraged products

On 20 September 2018, IOSCO released a final report concerning the marketing and sale of over-the-counter ("**OTC**") leveraged products to retail investors.

The report follows a statement warning the public of risks of investing in illegal or fraudulent binary options published on 19 September 2018.

The report sets out three toolkits developed by IOSCO that provide guidance on risk mitigation strategies for retail investors who invest in OTC leveraged products. The toolkits:

- Outline policy measures that address specific risks arising from the offer and sale of the relevant products by intermediaries;

- Describe various education programmes addressing the nature and risks of the relevant products; and

- Explore issues raised by unlicensed entities offering OTC leveraged products to retails investors with a focus on unlicensed binary options firms.

Retail investors who invest in OTC leveraged products are encouraged to consider and adopt the protective measures taken by existing IOSCO members which are provided throughout the report.

The report is accessible here and the warning statement is accessible here.

Packaged Retail Insurance-based Investment Products ("**PRIIPs**")

(i) Joint Committee of the ESAs publishes guidance on the PRIIPs KID

On 20 July 2018, the Joint Committee of the European Supervisory Authorities ("**ESAs**") published further guidance on the Key Information Document ("**KID**") requirements for Packaged Retail and Insurance-based Investment Products ("**PRIIPs**").

The guidance seeks to promote common supervisory approaches and practices based on ongoing work to monitor the implementation of the KID. The guidance consists of:

- Updated Questions and Answers ("**Q&As**"), available here; and

- Updates to the Flow diagrams for the risk and reward calculations (New calculation example for Category 3 PRIIPs stress performance scenario), available here.

(ii) ESAs publish letter seeking Commission guidance on the scope of the PRIIPs Regulation

On 20 July 2018, the Joint Committee of the ESAs published a letter to Olivier Guersent, Directorate-General for Financial Stability, Financial Services and Capital Markets Union ("**FISMA**"). The letter, dated 19 July 2018, addresses the uncertainty as regards the scope of the PRIIPs Regulation and seeks Commission guidance in this respect.

The letter notes that concern has been raised by both market participants and national competent authorities ("**NCAs**") that in the absence of guidance on the application of the scope of the PRIIPs Regulation, product manufacturers are no longer making certain products available to retail investors in case they are deemed to fall within the scope of the PRIIPs Regulation. Furthermore, this uncertainty gives rise to the risk of divergent application of the PRIIPs Regulation by NCAs within the European Union.

The letter requests that the European Commission provide detailed public guidance as a matter of urgency on which types of products, and in particular bonds, fall within the scope of the PRIIPs Regulation.

A copy of the letter may be accessed here.

(iii) European Parliament to raise no objections on PRIIPS RTS delegated regulation on the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

On 23 August 2018, the European Parliament published its decision to raise no objections to the Commission delegated regulation supplementing the PRIIPs Regulation by providing regulatory technical standards in relation to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirements to provide such documents ("**Delegated Regulation**").

This follows from the draft decision published by the European Parliament on 29 March 2017 to raise no objections to the Delegated Regulation.

A copy of the decision is available here.

European Markets Infrastructure Regulation ("**EMIR**")

(i) ESMA issues statement on clearing exemption for PSAs under EMIR Refit Regulation

On 3 July 2018, ESMA issued a statement providing clarity on the 'clearing obligations for pension scheme arrangements' in the context of the proposed EMIR Refit Regulation.

The statement clarifies that small and non-financial counterparties will enjoy simplified clearing rules while pension scheme arrangements ("**PSAs**") will benefit from a temporary exemption from the mandatory clearing of derivatives, as was enjoyed by PSAs under the EMIR exemption which expired on 17 August 2018.

The statement provides that supervisory authorities are not to focus on PSAs between the expiration of the exemption under the EMIR Regulation and the extension of the exemption under the new proposed EMIR Refit Regulation, which remains to be finalised.

The EMIR Refit Regulation will be considered by the European Commission and the Council of the European in July 2018, while the European Parliament have already adopted the proposal as of 12 June 2018.

A copy of the communication on the 'clearing obligations for pension scheme arrangements' can be found here and the updated communication is available here.

On 23 August 2018, the Central Bank issued a statement welcoming ESMA's statement on the clearing and trading obligation for PSAs.

The Central Bank confirms that in accordance with the ESMA's recommendation it will apply its risk-based supervisory powers in the day-to-day enforcement of applicable legislation, such as EMIR's clearing obligation and MiFIR's trading obligation in a proportionate manner.

A copy of the Central Bank's statement can be accessed here.

(ii) Decision to increase ECB's regulatory powers over clearing systems adopted by European Parliament

On 4 July 2018, the minutes of the European Parliament's plenary session where a report on a draft decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank ("**ECB**") was published (the "**Decision**").

The Decision provides the ECB with a greater role in the regulation of clearing systems for financial instruments including central counterparties ("**CPPs**") by proposing that the ECB and national central banks of Eurozone Member States are granted the authority to monitor and assess risks posed by CPPs clearing substantial sums of euro-denominated transactions. The Decision also proposes that the ECB is empowered to adopt additional requirements for such CPPs where necessary.

Once the Council of the European Union has determined its negotiating position, then negotiations will commence between the two European institutions.

A copy of the plenary session minutes can be found here and the text of the amendments can be found here.

(iii) Consultation on extending the temporary exemption from EMIR clearing obligations launched by ESMA

On 12 July 2018, ESMA published its consultation paper titled 'Clearing obligation under the European Market Infrastructure Regulation ("**EMIR**") No. 6' (the "**Paper**").

The Paper proposes extending the deferred date of application of the clearing obligations under EMIR for certain intragroup transactions where one of the counterparties is located in a third country until 21 December 2020. The existing exemptions to the clearing obligations apply where an equivalence decision in respect of the third country has not been made. These exemptions however expire on:

- 21 December 2018 for Commission Delegated Regulation ("**CDR**") on interest rate swaps ("**IRS**");
- 9 May 2019 for the CDR on credit default swaps; and
- 9 July 2019 for the second CDR on IRS.

To date the European Commission has made no equivalence decision on the legal, supervisory or enforcement framework of a third country under article 13(2) of EMIR regarding the clearing obligation prompting this consultation to extend the exemption timeframe.

All responses to the Paper were required to be submitted by 30 August 2018.

For further information a copy of the Paper is available here.

On 31 August 2018, ISDA and the Futures Industry Association (the "**FIA**") published a joint response to ESMAs consultation paper regarding Clearing Obligations under EMIR (the "**Response**"). The Response provides the following:

- ISDA and the FIA support the proposed extension of the temporary intragroup exemption;
- Regarding the proposed extension for the derogation of G4 IRS, ISDA and the FIA;
- Recommend a further extension of 2 years with an option to extend for a further year on a rolling basis;
- ISDA and the FIA are of the view that an equivalence test for a group entity from a non-EU jurisdiction is a pre-requisite to the application of the intragroup exemption is unnecessary.

A copy of the Response can be found here.

On 27 September 2018, ESMA released a final report on the extension of the deferred date of application of the clearing obligation under EMIR.

The final report follows a public consultation on the amending draft regulatory technical standards ("**RTS**") and presents a new set of RTS on the clearing obligation, relating to the treatment of certain intragroup transactions concluded with a third country.

The final report has been sent to the European Commission for endorsement.

The report can be accessed here.

(iv) Q&A on EMIR data reporting updated by ESMA

During the period 1 July 2018 to 30 September 2018, ESMA published an updated version of its Question & Answers ("**Q&A**") on the implementation of European Market Infrastructure Regulation. The revisions to the Q&As comprise:

- General Question ("**GQ**") 1: An amendment to GQ1 has been inserted regarding the identification of counterparties to a derivative which confirms that a portfolio manager

could be a counterparty to a derivative when entering into a derivative on its own account and own behalf;

- Trade Repositories ("**TR**") Q&A 40: An amendment to Q&A 40 regarding Legal Entity Identifiers ("**LEI**") to simplify the description of the existing process;

- Part IV of the Q&As (Reporting to TRs – Transaction scenarios): A new case for reporting derivatives to TRs has been added to explain the procedure for the reporting TRs in a transaction scenario involving portfolio management companies;

- CCPs Q&A 23: A new Q&A which clarifies access models at European CCPs, specifically models that typically aim at facilitating buy-side or small participant access to CCPs and allowing better capital treatment for clearing members; and

- TR Q&A 49: A new Q&A which explains how a reporting counterparty should report a foreign exchange ("**FX**") swap derivative under Article 9 of EMIR. This Q&A applies from 26 September 2019.

For further information a copy of the Q&A on the implementation of EMIR can be accessed here.

(v) FSB publishes self-assessment questionnaire for prospective UPIs

On 16 July 2018, a self-assessment questionnaire was published by the Financial Stability Board ("**FSB**") to be used by prospective unique identifier ("**UPI**") service providers that wish to be so designated by the FSB. Responses were requested to be submitted by 4 September 2018. The FSB also published an explanatory memorandum for this purpose.

The UPI identifies the product that is the subject of an over the counter ("**OTC**") derivatives transaction and is designed to add transparency to the derivatives market. The FSB devised the self-assessment questionnaire with the assistance of the CPMI and IOSCO each of which have separately published technical guidance on the harmonization of UPIs in September 2017.

Responses are to consist of a self-governance plan setting out how key governance criteria would be met, which explains how it would meet the relevant governance functions and the technical guidance. By mid-2019, the FSB expects conclusions to have been reached in respect of the UPI governance arrangements.

For further information on the self-assessment questionnaire please find a copy of same here and the accompanying press release here.

(vi) ISDA publish paper on Initial Margin for Non-Centrally Cleared Derivatives

On 19 July 2018, ISDA issued a paper on the topic of Initial Margin for Non-Centrally Cleared Derivatives (the "**Paper**"). The Paper looks at the requirements provided for in the 'Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives', which was produced by the Basel Committee on Bank Supervision and International Organization of Securities Commissions.

The initial margin requirements will come into force under this framework by way of a phasing-in process up until 2020 and the Paper emphasises key issues which market participants must be aware of during the implementation phase.

A copy of the Paper can be found here.

(vii) Amendments to Draft RTS of SFTR and EMIR proposed by Commission in Communication

On 27 July 2018, the European Commission published a communication announcing its intention to:

- Endorse the draft regulatory technical standards ("**RTS**") and implementing technical standards ("**ITS**") under the Regulation on reporting and transparency securities financing transactions 2015/2365 ("**SFTR**") subject to certain amendments, and;

- To amend ITS under the European Infrastructure Regulation ("**EMIR**") which concerns over the counter derivatives transactions, central counterparties and trade repositories.

The Communication provides that the Commission believes that a particular provision in the ITS and RTS of the SFTR which sets out details of securities financing transactions that market participants have to report to trade repositories needs to be amended. The Communication introduces a proposed amendment which clarifies that the Commission is responsible for the introduction of changes to the reporting requirements provided ESMA has presented a proposal, regarding same.

The proposed amendment also provides that all references to "endorsements by ESMA" shall be removed from the draft technical standards. Furthermore, the phrase "endorsements from ESMA" is also proposed to be removed from ITS for format and frequency of reports to trade repositories under EMIR under the Commission Implementing Regulation 2017/205.

The Annex to the Communication contains a letter which sets out that the Commission intends to endorse the draft RTS and ITS subject to the amendments stipulated in the Communication and also requests that an amendment to the ITS under EMIR be submitted and sets out an explanation for such a request.

ESMA has a six-week period to re-submit the draft RTS and ITS containing the amendments proposed in the Communication, and the Commission may then adopt the amended standards.

For further information please find a copy of the Communication here.

(viii) Central clearing interdependencies report by BCBS, CPMI, FSB and IOSCO published

On 9 August 2018, a second report titled 'Analysis of Central Clearing Interdependencies' and authored by the Basel Committee on Banking Supervision ("**BCBS**"), the CPMI, the FSB and IOSCO was published (the "**Report**").

The Report seeks to determine the interdependencies between central counterparties ("**CCPs**"), their clearing parties and other financial service providers. The Report notes that the findings are broadly consistent with the previous analyses which was published in the first report in July 2017. To ensure the comparisons are accurate the same twenty-six CCPs across fifteen jurisdictions were analysed in this second report. The results include:

- A small number of CCPs benefit from prefunded financial resources;
- A small number of entities have CCP exposures;
- A small number of entities provide the critical services required by CCPs; and
- Other critical services required by CPPs are provided by clearing members and clearing member affiliates and are shown to be able to maintain several types of relationships with multiple CCPs simultaneously.

The Report also sets out the differences in the results identified between the first report and the second report such as a decrease in client clearing activity.

The Report provides a greater insight into the areas that are most vulnerable to systemic risk and will be used by policy members in efforts to prevent them.

For further information a copy of the Report is available here.

(ix) ESMA introduces changes to the validation rules for reporting submitted under Article 9 EMIR

On 9 August 2018, ESMA published an update to its validation rules for the reports submitted under the revised technical standards on reporting under Article 9 of EMIR. ESMA explains that it has updated the validation rules, with effect from 5 November 2018, relating to the following fields:

- Reporting timestamp;

- Reporting counterparty ID;
- ID of the other counterparty;
- Underlying identification; and
- Confirmation means.

A copy of the new validation rules is available here, while the accompanying press release can be accessed here.

(x) List of CCPs authorized to operate in Europe published by ESMA

On 9 August 2018, ESMA published a list of the central counterparties ("**CCPs**") that are authorized to offer services and activities in the European Union as required under Article 88(1) of EMIR.

The changes include the extension of authorization for the following CCPs:

- ICE Clear Netherlands B.V. – established in the Netherlands with the extension from 13 July 2018; and
- ICE Clear Europe Limited (ICE Clear Europe) – established in the United Kingdom with the extension from 31 July 2018.

A copy of the list can be accessed here.

(xi) Update to Public Register for Clearing Obligations under EMIR

On 9 August 2018, ESMA updated the '*Public Register for the Clearing Obligations under EMIR' as required under Article 6 of the Regulation on over the counter derivatives, central counterparties and trade repositories (EMIR)*' to ensure market participants are informed of their clearing obligations.

A copy of the register is available here.

(xii) CPMI and IOSCO publish consultative report on governance arrangements for OTC derivatives

On 16 August 2018, the CPMI and IOSCO published the consultative report titled 'Governance arrangements for critical over the counter ("**OTC**") derivatives data elements (other than UTI and UPI)". All responses to the consultation report were due by 27 September 2018.

Critical data elements ("**CDE**") are used along with UTI, UPI and Legal Identifier Codes ("**LEI**") for reporting OTC derivatives. The consultative report assesses CDEs against

these other methods for reporting OTC derivatives and includes an examination of the following in relation to CDEs:

- Key criteria for its maintenance and governance;
- The areas of its governance and governance functions;
- The governance functions proposed to be allocated to different bodies;
- Maintenance functions and whether such functions could be executed by a maintenance body and analysing the relevant factors to identify such a body; and
- The approach of CPMI and IOSCO's regarding its implementation.

This consultative report is part of CPMI and IOSCO's effort to develop a global guidance on harmonising data elements reported to trade repositories.

For further information please find a copy of the consultative report here.

(xiii) ESMA updates list of recognised third-country CCPs

On 22 August 2018, ESMA has updated its list of recognised third-country CCPs to offer services and activities in the European Union on OTC derivatives, central counterparties and trade repositories. Recognition of third-country CCPs is required under EMIR by ESMA in order to operate in the European Union.

A copy of the updated list can be accessed here.

(xiv) EFAMA feedback on Incentives to Centrally Clear over-the-counter Derivatives

On 7 September 2018, EFAMA published its views on a consultation paper on over-the-counter ("**OTC**") Derivatives which was released by the Basel Committee on Banking Supervision, the Committee on Payments and Market Infrastructures, the Financial Stability Board and the International Organization of Securities Commissions on 7 August 2018 (the "**Committees**") (the "**Consultation Paper**").

In the Consultation Paper EFAMA clearly replies to the questions raised in the paper and also provides general remarks on mandatory central clearing.

The Consultation Paper can be found here and EFAMA's response to the Consultation Paper can be viewed here.

(xv) Updated Frequently Asked Questions on EMIR

On 10 September 2018, the Central Bank updated its Frequently Asked Questions ("**FAQs**") on EMIR. In this update, the Central Bank has answered Question 8 relating to legal entity identifier ("**LEI**") codes and national authorised LEI providers.

The Central Bank has indicated that LEI Codes are available from LEI issuers accredited by the Global LEI Foundation ("**GLEIF**"). A list of all LEI Issuers is available via the GLEIF website. The Central Bank has also announced the introduction of Registration Agents to assist legal entities to access the network of LEI organisations.

The updated FAQs can be accessed here and a full list of LEI issuers can be accessed here.

(xvi) ESMA releases new version of Q&A document on the implementation of EMIR

On 26 September 2018, ESMA released an update to its Q&A on the implementation of EMIR, answers to newly posed questions from the general public, market participants and competent authorities with respect to the practical application of EMIR.

The Q&A document is intended to promote common supervisory approaches and practices under the ESMA Regulation.

New in this edition of the Q&A document, ESMA has clarified the position on central counterparties establishing access models and explained how a reporting counterparty should report a foreign exchange swap derivative under EMIR with effect from September 2019.

This Q&A document will be edited as and when new questions are received in order to assist competent authorities under the Regulation to ensure that their actions are converging along the lines of the responses adopted by ESMA.

The Q&A document can be accessed here.

Securitisation Regulation

(i) Responses to ESMA's consultation paper on repositories published

On 3 July 2018, ESMA received responses in relation to two of its consultation papers:

- The first consultation paper was titled '*ESMA's technical advice to the Commission on fees for securitisation Repositories under the Securitisation Regulation*' and responses received in relation to it are available here.

- The responses to the second consultation paper titled '*Draft technical standards on the application for registration as a securitisation repository under the Securitisation Regulation*' are available here.

(ii) EBA publishes final RTS on the homogeneity of the underlying exposures in securitisation and risk retention

On 31 July 2018, the European Banking Authority ("**EBA**") published its final draft RTS on defining the homogeneity of the underlying exposures in securitisation.

The homogeneity requirement aims to facilitate the assessment of underlying risks by investors and to enable them to perform robust due diligence. The RTS further specify which underlying exposures are deemed homogeneous. The RTS are applicable to both asset-backed commercial paper ("**ABCP**") and non-ABCP securitisations. The draft RTS are available here.

The EBA also published final draft RTS on risk retention for securitisation transactions. The RTS aim to provide clarity on the requirements relating to risk retention, thus reducing the risk of moral hazard and aligning interests. The draft RTS are available here.

Both sets of draft RTS have been submitted to the European Commission for adoption.

(iii) ESMA publishes final report on technical standards and disclosure requirements under the Securitisation Regulation

On 22 August 2018, the ESMA published a final report on technical standards on disclosure requirements under the Securitisation Regulation. The final report contains draft regulatory and implementing standards ("**RTS / ITS**") which require certain information to be reported about securitisations by the originator, sponsor or special purpose entity.

Under the draft RTS, the information required includes detail on;

- The underlying exposures in the securitisation;

- Information on investor reports;

- Inside information that must be made public in accordance with the Market Abuse Regulation and significant events affecting the transaction.

The report includes the format for making required information available and the draft technical standards provide reporting templates for different types of securitisation, including asset and non-asset backed commercial paper and different types of underlying exposure, including real estate, corporate, automobile, consumer, credit card and other leases.

The draft RTS/ITS has been submitted to the European Commission for endorsement.

A copy of the final report can be accessed here.

(iv) Implications for UCITS management companies and AIFM before the Securitisation Regulation takes effect

Prior to the Securitisation Regulation (the "**Regulation**") taking effect on 1 January 2019 UCITS management companies, alternative investment firm managers ("**AIFM**"), internally managed UCITS and internally managed AIF funds (each a "**Man Co**") will need to consider the following actions in respect of exposures generated to European Union or Non-European Union securitsations issued on or after January 2019:

- Conduct due diligence on the credit-granting process of the originator or original lender;
- Conduct due diligence on risk retention on the part of the securitising entity;
- Confirm that the securitising entity has complied with its disclosure obligations;
- Assess the risks associated with the relevant securitisation;
- Implement written policies and procedures, reporting regimes and record-keeping; and
- Take corrective action where a securitisation does not comply with the Regulation.

In the first instance each Man Co will need to review the investment universe of funds under management to determine whether any such funds gain exposure to positions which constitute a "securitisation" within the meaning of the Regulation. Each Man Co should then review their processes, policies and procedures, prospectus and contractual arrangements with delegate investment managers.

Dillon Eustace has prepared an article which considers in more detail the implications of the Regulation on Man Cos, a copy of which is accessible here.

The Securities Financing Transactions Regulation ("**SFTR**")

(i) ESMA publishes opinion on proposed amendments to SFTR technical standards

In an Opinion (dated 4 September 2018) issued by ESMA it set out its reasons for declining to adopt the amendments proposed by the European Commission to the regulatory technical standards ("**RTS**") and implementing technical standards ("**ITS**") on reporting under the SFTR Regulation.

The provisions relate to the use of legal entity identifiers for branches and unique transaction identifiers for reporting to trade repositories. ESMA provided the following reasons why it declined the amendments namely:

- It will prevent ESMA from fulfilling its mandate under Article 4(1) of the SFR by eliminating the possibility to take into account international developments and reporting standards agreed at global level and risk timely alignment with international reporting standards;
- It does not provide the certainty, clarity, predictability and consistency that is integral for the market and authorities in relation to reporting standards;
- The amendments deviate from and create inconsistency with current reporting standards under EMIR which are already endorsed by the European Commission;
- It would result in a significantly extended timeline for the introduction of global standards in the European Union, meaning either a reduced timeline for the adaptation by the industry, or otherwise failure to meet international commitments for the introduction of those reporting standards in the European Union.

A copy of EMSA September 2018 opinion is accessible here and a copy of the accompanying letter to the European Commission regarding the Opinion can be found here.

Central Securities Depositories Regulation ("**CSDR**")

(i) The European Central Securities Depositaries Association consults on CSDR settlement fail penalties framework

On 9 July 2018, the European Central Securities Depositaries Association ("**ECSDA**") published the draft version of its future settlement fail penalties framework (the "**Framework**") for consultation.

The framework aims to create a harmonised set of rules for the creation and operation of settlement discipline cash penalties mechanisms by all European central securities depositories ("**CSDs**") subject to the CSDR or equivalent provisions.

The consultation closed on 17 August 2018.

The draft Framework and the accompanying press release can be accessed here.

(ii) ESMA publishes list of 'relevant authorities' to be involved in authorisation and supervision of CSDs

On 18 July 2018, ESMA published on its website a list of the relevant authorities that are able to be involved in the authorisation and supervision of central securities depositories ("**CSDs**") in Europe as specified in Article 12(1) of the CSDR. The Central Bank is provided as the competent authority for Ireland.

A link to the page on their website is available here.

(iii) Update to CSD Register

On 9 August 2018, ESMA updated the information required to be provided by relevant authorities to the CSD register documenting information required under Article 21 and 58 of the CSDR.

The register contains the following information:

- CSDs authorised under Article 16 of the CSDR;
- Third-country CSDs recognised under Article 25 of the CSDR;
- Parties allowed by Member States under Article 31 of the CSDR to provide certain core services; and related information.

Competent authorities are required to inform ESMA of any changes to the information as it is contained in the register.

For further information a copy of the register is available here.

(iv) European Commission publishes Delegated Regulation supplementing CSDR with RTS

On 13 September 2018, the European Commission published the Commission Delegated Regulation supplementing the CSDR. Among other things, the Delegated Regulation requires central securities depositories to:

- Take measures to limit the number of settlement fails;
- Put systems in place that enable them to monitor the number of value and length of settlement fails;
- Charge cash penalties to users that cause settlement failures;

The Delegated Regulation will enter into force on 13 September 2020.

The Delegated Regulation can be accessed here.

(v) New topics clarified in ESMA's updated Q&A on CSDR

On 27 September 2018, ESMA issued an update to its Questions and Answers ("**Q&A**") on the Implementation of the CSDR. The document is intended for National Competent Authorities under the CSDR and contains responses to questions posed to ESMA concerning the practical application of the CSDR.

Topics covered in the new edition of the Q&A relate to the following:

- Book entry forms;
- Organisational Requirements; and
- Settlement Discipline.

Future updates to the Q&A document are expected as and when the need arises.

The Q&A document can be accessed here.

Credit Rating Agencies Regulation ("**CRAR**")

(i) ESMA clarifies the "as stringent as" requirements under CRAR endorsement regime in Final Report

On 18 July 2018, ESMA published its Final Report titled 'Guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation ("**CRAR**") in order to provide supplementary guidance on how to assess if a requirement is "as stringent as" the requirements set out in CRAR for the purposes of the endorsement regime.

The endorsement regime under Article 4(3) of the CRAR enables a European Union credit rating agency ("**CRA**") to endorse the credit-rating issued by a third-country CRA where the third-country CRA uses requirements that are "at least as stringent as" those set out in the CRAR when providing the credit-rating.

The Final Report consolidates the guidance issued in November 2017 with the new section 5.3, stretching from page 48 to 51 of the report, which sets out a non-exhaustive list of the alternative requirements that qualify as "as stringent as" for the purposes of the endorsement provision in the CRAR. The Final Report was subject to consultation in March 2018 and some changes suggested for the draft final report have been adopted.

The Final Guidelines apply to credit ratings issued on or after 1 January 2019 and to existing credit ratings reviewed after that date.

For further information please find a copy of the Final Report here.

(ii) Consultation paper published on submissions of periodic information by CRAs

On 19 July 2018, ESMA published a consultation paper titled 'Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies ("**CRAs**") – Second Edition' ("**Consultation Paper**"). The first edition of these guidelines was published in March 2015.

The Consultation Paper sets out to update the guidelines and in particular suggests introducing change in the following areas:

- Development of reporting categorisations for CRAs;
- Development of reporting calendars based on reporting categorization;
- Standardising reporting templates; and
- Providing additional reporting instructions in areas identified by ESMA as requiring increased supervision.

Stakeholders had until 26 September 2018 to submit their responses to the Consultation Paper.

A copy of the Consultation Paper here.

Further to this consultation ESMA, on 8 August 2018, published Draft guidelines on periodic information to be submitted to ESMA by CRAs.

For further information please find a copy of the guidelines here.

(iii) Five banks fined €2.48 million by ESMA for issuing credit ratings

On 23 July 2018, ESMA published a press release announcing the imposition of fines amounting to €2.48 million between five banks for negligently breaching the CRA Regulation by issuing credit ratings without authorisation from ESMA, as required under the legislation.

The banks found to have failed to obtain the authorisation from ESMA to issue CRAs are:

- Danske Bank: A copy of the decision is available here, and the public notice here;
- Nordea Bank: A copy of the decision is available here and the public notice here;
- Skandinaviska Enskilda Banken: A copy of the decision is available here and the public notice here;

- Svenska Handelsbanken: A copy of the decision is available here and the public notice here; and

- Swedbank: A copy of the decision is available here and the public notice here.

(iv) Nordic Credit Rating AS registered as Credit Rating Agency

On 27 July 2018, the EFTA Surveillance Authority ("**EFTA SA**") registered the Nordic Credit Rating AS ("**NCR**") as a Credit Rating Agency ("**CRA**") under the CRA Regulation.

In order to be registered as a CRA a company must be able to demonstrate that it can comply with the requirements of the CRA Regulation, including on:

- The governance of CRAs and the management of conflicts of interest;

- The development and application of methodologies for assessing credit risk; and

- The disclosure of information to ESMA and to market participants.

The decision was adopted by the EFTA SA on the basis of a draft prepared by ESMA which is the European Union's single supervisor for CRAs.

This decision comes into effect on 3 August 2018 and NCR intends to issue corporate ratings.

A copy of the EFTA SA press release can be found here and with ESMA's press release available here.

(v) ESMA registers Moody's Investors Service (Nordics) AB as a CRA

On 13 August 2018, ESMA published a press release announcing that 'Moody's Investors Service (Nordics) AB', a company based in Sweden, had been registered as a CRA.

This brings the total number of CRAs registered in the European Union to 28. Only companies registered as CRAs by ESMA pursuant to the CRA Regulation may issue credit ratings for regulatory purposes.

Moody's Investors Service (Nordics) AB intends to issue sovereign and public finance ratings, structured finance ratings and corporate ratings.

For further information please find a copy of the press release here.

Benchmarks Regulation

(i) The Steps to Benchmark Reform

On the 4 July 2018, ISDA issued further guidance on how firms can best respond to the recent reform of interest rate benchmarks ("**Guidance**").

The Guidance outlines the importance of having proper internal procedures in place, specifically in terms of a formal transition programme, an assigned budget and an appropriate governance structure. ISDA highlights the following important steps which organisations should consider in this regard:

- Examine their exposure to Interbank Offer Rates ("**IBORs**") and to establish the expected roll-off of those positions;
- Analyse the appropriateness and the strength of fallback language within existing contracts for circumstances where IBORs would permanently cease to exist. In this regard ISDA has announced that it is currently working on a programme of implementing robust fallbacks for derivatives referenced to certain key IBORs;
- Proactive, clear and efficient communication, both internally and with clients on the plans to implement the necessary benchmark reform procedures.

A copy of the guidance can be found here.

(ii) ESMA issues statement on scrutiny session on Level 2 measures under Benchmarks Regulation and European Commission adopts delegated regulation

On 11 July 2018, ESMA published an introductory statement for the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") scrutiny session on the topic of Level 2 measures under the Benchmarks Regulation. The information provided by ESMA in the Statement includes that:

- ESMA submitted eleven draft regulatory technical standards ("**RTS**") and implementing technical standards ("**ITS**") to the European Commission on 30 March 2017 to promote "*accuracy, robustness and integrity*" of benchmarks and their determination process. An additional set of technical standards on 2 June 2017 was submitted regarding cooperation with third countries;
- Significant uncertainties have been caused due to the delayed endorsement by the European Commission of the RTS submitted by ESMA putting the proper implementation of Benchmarks Regulation at risk. ESMA has requested the European Commission to give clarity on the endorsement of RTS "as soon as possible";

- ESMA is awaiting the endorsement of the RTS before publishing the final version of the Level 3 guidelines applicable only to administrators of non-significant benchmarks which they have already consulted on; and

- The 'ESMA register of administrators and third country benchmarks' was first published on 1 January 2018 which is of significant importance because at the end of the transition period only benchmark administrators present in the register may be used by supervised entities in the European Union.

For further information please find a copy of the statement here.

On 13 July 2018, the European Commission endorsed the eleven RTS and ITS referred by ESMA in its statement that was submitted to the European Commission on 30 March 2017 along with the RTS submitted on 2 June 2017, through the adoption of twelve Delegated Regulations.

The Council of the European Union and the European Parliament now have to consider the Delegated Regulations. If neither object the Delegated Regulations will enter force twenty days after they are published in the Official Journal of the European Union.

(iii) ISDA launches consultation on fallbacks for IBORs

On 12 July 2018, ISDA launched a consultation paper seeking input on the approach to be adopted to address certain technical issues associated with new benchmark fallbacks for derivatives contracts referencing particular interbank offered rates ("**IBORs**").

The 2006 ISDA Definitions were amended to include fallbacks that would apply upon the permanent discontinuation of certain key IBORs. The fallbacks will be the alternative risk-free-rates ("**RFRs**") identified for the relevant IBOR in the amended 2006 ISDA Definitions. The adjustments to the RFRs are warranted due to the differences between IBORs and RFRs.

The consultation concerns the following IBOR rates in the 2006 ISDA Definitions: GBP LIBOR, CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW.

All responses must be submitted by 12 October 2018. Note that on 17 August 2018, ISDA published a list of Frequently Asked Questions on the IBOR Fallbacks for 2006 Definitions (the "**FAQs**")

For further information please find a copy of the consultation here and a copy of the FAQs can be found here.

(iv) FSB statement on interest rate benchmark reform relating to inter-bank offer rates

On 12 July 2018, a statement titled 'Interest rate benchmark reform – overnight risk-free rates ("**RFRs**") and term rates' was published by the Financial Stability Board ("**FSB**").

The statement sets out the FSB's views which may be particularly pertinent to market participants and other stakeholders due to a consultation by ISDA which is contemplating fall backs for particular derivative contracts on overnight RFRs. In the statement the FSB provides among other things that:

- It welcomes the identification and development of RFRs that are sufficiently robust to ensure financial stability. The FSB explains that robustness is achieved in these RFRs as they are anchored in active, liquid underlying markets;

- It warns that inter-bank offered rates ("**IBORs**") are vulnerable to manipulation by the term interbank and wholesale unsecured funding markets and therefore encourages the use of RFRs where possible;

- A transition to the new reference rates needs to be made in markets where IBORs are disappearing such as London IBORs; and

- Overnight RFRs are not necessarily the optimal rate in all cases where IBORs are currently in use and so term rates including RFR-derived term rates or rates derived from other markets may still be preferred in certain scenarios.

For further information a copy of the statement is available here and the accompanying press release is available here.

(v) ESMA updates its Q&A on the Benchmarks Regulation

During the period 1 July 2018 to 30 September 2018 ESMA published an updated version of the "Questions and Answers – on the Benchmarks Regulation" ("**Q&A**"). The updates can be summarised as follows:

- **Question 5.3: Calculation Agent – Article 3(1)(7) Benchmarks Regulation**: The Q&A clarifies that ESMA considers that calculation agents not to be users if the issuer of securities has set the terms of the financial instrument that references the benchmark;

- **Question 5.7: Regulated data benchmark – Article 3(1)(24) Benchmarks Regulation**: The Q&A clarifies that in principle any third party is precluded in the data collection process and the data should be sourced entirely and directly from a trading venue without the involvement of third parties;

- **Question 5.8: Financial instruments and systemic internalisers:** The Q&A clarifies when financial instruments traded on a systematic internaliser are within the Benchmarks Regulation scope;

- **Question 5.9: Use of benchmarks in certificates:** The Q&A sets out when banks issuing certificates are users of benchmarks;

- **Question 5.10: NAV of investment funds:** The Q&A explains why the net asset value of investment funds should be considered input data and not benchmarks;

- **Question 7.2: Family of benchmarks in the application for endorsement:** The Q&A confirms that a single application for endorsement can include a family of benchmarks;

- **Question 7.3: Language of the benchmark statement:** The Q&A sets out ESMA's view that benchmark statements should be published in a language that is accepted by the National Competent Authority of the relevant Member State;

- **Question 8.2: Written plans under Article 28(2):** The Q&A sets out when the written plan to be produced by benchmark users should be considered robust; and

- **Question 8.3: Written plans under Article 28(2):** The Q&A sets out how the plan should be reflected in the contractual relationship with clients.

The Q&A document can be accessed here.

(vi) Benchmarks Regulation supplemented by two new implementing regulations

On 9 August 2018, two Implementing Regulations were published in the Official Journal of the European Union that supplement the Benchmarks Regulation, namely:

- Commission Implementing Regulation 2018/1105: sets out implementing technical standards ("**ITS**") for procedures and forms used by competent authorities when providing information to ESMA as required under Article 47(2) of the Benchmarks Regulation;

- Commission Implementing Regulation 2018/1106: sets out ITS for compliance statement template in Annex I and Annex II for administrators of benchmarks under Article 25(7) and Article 26(3) which require such benchmarks to be published and maintained in certain scenarios.

Both implementing regulations came into force on 29 August 2018 and will apply from 29 October 2018.

For further information please find a copy of the Implementing Regulation 2018/1105 here and Implementing Regulation 2018/1106 here.

(vii) ISDA quarterly update focuses on benchmark transformation

On 16 August 2018, ISDA published the fourth volume to the second issue of the ISDA Quarterly brochure featuring the reform of interest rate benchmarks in light of the questionable viability of LIBOR and other IBORs, as its cover story.

A copy of the publication may be accessed here.

(viii) ESMA updates its webpage concerning the register under the Benchmarks Regulation

On 7 September 2018, ESMA transferred its benchmark administrators' and third country benchmark register to a new updated database webpage in accordance with Article 36 of Regulation 2016/1011 (the "**Benchmarks Regulation**").

The database can also be used to access the list of benchmark administrators authorised or registered with ESMA under Article 34 of the Benchmarks Regulation as well as those third country administrators who have been deemed equivalent, recognised or endorsed under Article 30(1), Article 32 or Article 33 of the Benchmarks Regulation. It also provides an up to date list of the third country benchmarks which comply with the conditions laid down in point (c) of Article 30(1) of the Benchmarks Regulation.

The new database can be accessed here.

(ix) ECB working group proposes new euro risk-free rate

On 13 September 2018, the ECB announced that its working group on euro risk-free rates has put forward a proposal for the issue the Euro Short Term Rate as the new euro risk-free rate. The working group recommends this new rate replace the current Euro Overnight Index Average from 1 January 2020.

Note that the working group's recommendations are not legally binding, however they are noteworthy in that they tend to reflect the general market views on an issue.

A copy of the ECB's press release relating to same can be found here.

(x) ISDA releases Benchmarks Supplement

On 19 September 2018, ISDA released its ISDA Benchmarks supplement which will assist firms in light of obligations existing under the Benchmark Regulation (the "**Supplement**"), namely the need to ensure that appropriate contingency arrangements are put in place addressing a scenario where the benchmark ceases to exist or materially changes or, subject to the transitional arrangements where a UCITS management company (self-managed UCITS) or AIFM (each a "**Man Co**") is prohibited from using the benchmark if the administrator is not authorised under the Benchmarks Regulation or a third country benchmark does not appear on ESMA's register of administrators and benchmarks.

Consequently, if the Man Co determines that the relevant OTC derivative contract (the underlying of which is a benchmark) falls within the scope of the Benchmarks Regulation, it will need to ensure that appropriate contingency arrangements are put in place addressing the above scenario.

ISDA intends that the incorporation of the Supplement by supervised entities in their client contracts, specifically relating to the terms of their interest rate, FX, equity and commodity derivatives, will enable firms to meet these obligations. Note that adoption of the Supplement is voluntary.

A copy of the Supplement may be found here.

On 19 September, ISDA also published a list of Frequently Asked Questions relating to the Supplement, which can be viewed here.

(xi) ECON publishes draft report on the Proposed Regulation on low carbon benchmarks and positive carbon impact benchmarks

In its draft report dated 27 September 2018, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") commented on the proposed Regulation amending the Benchmarks Regulation on low carbon benchmarks and positive carbon impact benchmarks.

While ECON supports the proposal put forward by the European Commission, as a first step towards introducing minimum standards for harmonising the methodology applicable to sustainable benchmarks, it has called on the European Parliament to aim for benchmarks that achieve objectives set out in the Paris Agreement as implemented in European Union legislation.

ECON further propose that the benchmark providers accurately describe what the climate impact of the benchmark is and how the benchmarks align with the Paris Agreement commitments as implemented in European Union legislation. Other notable observations made by the ECON include the following:

- The proposed Regulation should be aligned with the European Union taxonomy regulation as and when it comes into force;
- The benchmark sector should be reviewed to ensure that it is sufficiently competitive in light of the rapid evolution in climate technology; and
- The new innovations in climate technology should be integrated by the European Commission.

In this regards, the proposed amendments to the text of the Regulation are set out in the draft report.

The full details of the draft report can be accessed here.

Short Selling Regulation ("**SSR**")

(i) ESMA issues updated links to national websites explaining the procedures for notifications of net short positions

On 24 August 2018, ESMA issued an updated publication with links to national websites where the procedures for notification of net short positions are explained.

It is a requirement to notify National Competent Authorities ("**NCAs**") and to publicly disclose net short positions under the Regulation on Short Selling and certain aspects of credit default swaps.

The links of the websites are received from the NCAs and where available, it includes the links to both the national language and English versions of the relevant sections of the website. ESMA updates the list upon the receipt of new information from the NCAs.

A copy of the press release can be found here with the updated list accessible here.

(ii) ESMA publishes updated list of market makers and authorised primary dealers who are using the exemption under the Short Selling Regulation

During the period 1 July 2018 to 30 September 2018, ESMA published an updated list of market makers and authorised primary dealers who are using the exemption under the Short Selling Regulation.

The list is available here.

Payment Services Directive ("**PSD2**")

(i) Update to ESMA's Designated Payment and Securities Settlement System

During the period 1 July 2018 to 30 September 2018, the ESMA updated its register setting out the designated payment and securities settlement systems as required under Article 10(1) of the Settlement Finality Directive 98/26.

A copy of the register is available here.

(ii) Revised version of EPC's guidelines on mobile contactless card payments

On 2 July 2018, the revised guidelines on the 'Mobile Contactless Single European Payments Area ("**SEPA**") Card Payments Implementation Interoperability Guidelines' ("**MCP IIGs**") were published by the European Payments Council ("**EPC**").

The update is a response to the rapid developments in the fintech industry whereby the guidelines first published in 2011, are now outdated. The revised guidance focuses on the interoperability between all of the different stakeholders involved in the mobile contactless payments system to provide a clear understanding of the technology and its use in the market.

The update notes the lack of standardisation in Europe in this area while providing significant additions to the guidelines. These include the addition of cloud-based host card emulation to its scope along with the alignment with new regulations such as the second Payment Services Directive and the introduction of new concepts including 'tokenisation' and 'payment card manager'.

For further information a copy of the guidelines is available here.

(iii) EDPB comments on the challenges ensuring PSD2 complies with GDPR

On 5 July 2018, the European Data Protection Board ("**EDPB**") published a letter addressed to the European Parliament in relation to the second Payment Services Directive 2015/2366 ("**PSD2**") which had a deadline for transposition on 13 January 2018.

The letter is a response to the European Parliament's request for clarification in relation to the protection of personal data under PSD2. While the EDPB provides comments on the questions raised the complex nature of the interaction between the General Data Protection Regulation ("**GDPR**") and PSD2 is recognised and a discussion between European financial services and data protection authorities is advised. PSD2 involves the introduction of significant more data sharing between companies in the financial services industry thus naturally requiring a close look at its interaction with GDPR. The commentary provided relates to:

- Payment initiation service providers ("**PISP**") – which are a new category of payment service provider under PSD2. The lack of consent from the party receiving the funds and therefore whether the PISP can process the personal data of the receiving party to transfer the funds;
- The definition to be attributed to "explicit consent" under PSD2 and the process of providing and withdrawing same. The EDPB considers whether it should be given the same definition as provided in the GDPR;
- The Regulatory Technical Standards on 'strong customer authentication' and 'common and secure communications' and how these standards interact with GDPR; and
- When sharing data whether banks have sufficiently secure interfaces.

The EDPB will continue monitoring the implementation of PSD2 to ensure its implementation is consistent with the protection of consumer's personal data as required under GDPR.

A copy of the letter is available here.

(iv) Fraud Reporting Guidelines for PSD2 published in Final Report by EBA

On 19 July 2018, the European Banking Authority ("**EBA**") published its 'Final Report on fraud reporting guidelines under the revised Payment Services in Internal Markets Directive 2015/2366' ("**PSD2**") ("**Final Report**").

The Final Report sets out the rationale and new guidelines developed by the ECB and EBA which aim to promote consistent methodology, definitions and data breakdowns to be used by payment service providers ("**PSPs**") when providing statistical data "on fraud relating to different means of payment to their National Competent Authorities" ("**NCAs**") as required under Article 96(6) of PSD2. NCAs are in turn required to report such data to the EBA and ECB in an aggregated form under the same section of PSD2. The Guidelines are designed to ensure data is consistently collected across Member States.

The guidelines were subject to a consultation period ending November 2017 and certain proposals made during the consultation process have been incorporated into the Final Report. Consequently, updates have been made to the following areas:

- Frequency of reporting;
- Geographical area, which has been reduced to the same area for all the requirements in the guidelines (with no country-by-country data requirement);
- Categories of fraudulent transactions required to be reported has reduced from three to two, with fraudulent transactions where the payer is the fraudster no longer within the scope of the guidelines; and
- Fraud types, which have been aligned across the payment services and instruments.

Furthermore the guidelines have been further aligned with similar reporting instruments such as those relating to the ECB Regulation on payment statistics.

Once the guidelines have been translated into each of the official languages of the European Union they will be published on the EBA website. NCAs will then have two months from the date of publication to indicate whether they will comply with the guidelines. If an NCA decides to comply with the new guidelines they will apply to them from 1 January 2018.

For further information please find a copy of the Final Report here which contains the guidelines from page 11.

(v) Central Bank updates PSD2 FAQs

On 19 July 2018, the Central Bank updated their PSD2 Frequently Asked Questions ("**FAQs**") originally published on 19 January 2018.

A link to the FAQs on the Central Bank's website is available here.

(vi) Final Report on RTS for the cooperation between NCAs in the supervision of PSPs published

On 31 July 2018, the EBA published its 'Final Report – Draft Regulatory Technical Standards ("**RTS**") on cooperation between National Competent Authorities ("**NCAs**") in home and host Member States in the supervision of payment institutions operating on a cross-border basis under Article 29(6) of the revised Payment Services Directive ("**PSD2**")'.

The RTS set out the 'cooperation framework' through which information will be exchanged between NCAs, devised by the EBA as mandated by Article 29(6) of PSD2. The RTS specify the method, means and details of cooperation between NCAs in their supervision of payment institutions operating on a cross-border basis which includes specifying the procedure for the requests and replies between NCAs such as requiring single contact points, certain language, standardised forms and timelines. The Final Report explains that the rationale for these RTS is to enhance cooperation between NCAs.

A consultation paper on the proposed RTS was published in October 2017 with the amendments made including to:

- Reporting requirements from a characteristic subset of payment institutions; and
- Clarifying how the RTS apply mutatis mutandis to electronic money institutions.

The draft RTS will be submitted to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council of the EU. They will then be published in the Official Journal of the European Union and enter into force twenty days later.

A copy of the Final Report containing the RTS is available here.

(vii) Extension to Joint-committee guidelines on complaints handling to institutions established under PSD2 and MCD

On 31 July 2018, the EBA published its 'Final Report on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under the revised Payment Services Directive ("**PSD2**") and/or the Mortgage Credit Directive ("**MCD**")'.

The amendments introduced to the Joint Committee guidelines on complaints handling extend the scope of the application of the guidelines to authorities charged with the supervision of new institutions established pursuant to PSD2 and MCD. This extension offers consistency of consumer protection across all financial institutions i.e. banking, investment and insurance sectors providing consumers with the same rights irrespective of the regulated product or service they are purchasing or the institution from which it is being purchased.

The guidelines will first have to be translated into the official languages from the European Union and two months therefrom NCAs will be required to have indicated whether they will be complying with the guidelines, which become effective from 1 May 2019 the extension will be effective.

For further information a copy of the guidelines is available here.

(viii) ECB opinion on proposed removal of currency conversion charges on cross-border payments in the Union

On 17 September 2018, the European Council published the opinion of the ECB on the proposed Regulation amending Regulation 924/2009 regarding certain charges on cross-border payments in the Union and currency conversion charges ("**Proposed Regulation**"). Feedback had been requested from the ECB by the European Council on the Proposed Regulation in June 2018.

The Proposed Regulation intends to provide all citizens and companies in the European Union transferring euros cross-border, whether between euro area and non-euro area Member States or between non-euro area Member States, with the low levels of fees that are currently available in respect of domestic payments made in the official currency of a Member State. In doing this the proposed Regulation will:

- Enhance consumer protection;
- Strengthen the internal market for payment services; and
- Promote the euro for intra EU payments by applying a low level of fees to persons and undertakings transferring euro cross border.

In its opinion the ECB discusses the following:

- The scope and provisions relating to currency conversion charges;
- Alternative currency services and options; and
- The regime applicable to currency charges and transitional period.

The Proposed Regulation can be found here and the ECB opinion can be viewed here.

(ix) EPC guidance on its Single European Payments Area scheme rulebooks

On 18 September 2018, the European Payments Council ("**EPC**") published the following guidance documents/clarifications papers on its single European payments area scheme rulebooks:

- Clarification paper on SEPA Credit Transfer and SEPA Instant Credit Transfer rulebooks;
- Guidance on reason codes for SEPA Instant Credit Transfer R-transactions;
- Clarification paper on SEPA Direct Debit Core and SEPA Direct Debit Business-to-Business rulebooks;
- Clarification paper on Creditor Identifier Overview;
- Guidelines for the appearance of mandates in the SEPA Direct Debit schemes;
- Guidance on reason codes for SEPA Credit Transfer R-transactions; and
- Guidance on reason codes for SEPA Direct Debit R-transactions.

The Guidance documents/Clarification Papers can be found here.

International Monetary Fund ("**IMF**")

(i) Central Banks and legal protection – study conducted by IMF

On 2 August 2018, the International Monetary Fund ("**IMF**") published a working paper titled 'Legal Protection: Liability and Immunity Arrangements of Central Banks and Financial Supervisors'.

The working paper argues that the legal protection central banks' enjoy must be appropriate balancing their independence and accountability. The importance attached to central banks' legal protection is undisputed since it is essential to achieve their independence and protection from undue influence from the State and society particularly in the area of conducting monetary and financial stability policy so that difficult decisions can be made without fear or repercussions. This freedom however must come at a cost of accountability to insure against reckless behaviour.

The paper promotes an idea of "appropriate protection" and "function specific" protection which would vary from country to country and be contextual. The appropriate protection would not mean blanket immunity where central banks and financial supervisors operate in a power vacuum but rather would differ depending on the official and function being exercised and hold them accountable for their actions and omissions. Accountability means decision-makers, staff, and others are answerable, ex post, for the manner decision-making

powers are used along with possible transparency requirements such as reporting requirements to the Minister and/or to Parliament.

The paper analyses different forms of central bank liability identifying who may be liable, the circumstances liability may be imposed and possible exclusions. The paper carries out a case study analysis of the legal protection afforded in certain central banks including Thailand, Cyprus, Israel and Colombia for illustrative purposes.

The paper concludes calling for further analysis to be conducted into central bank laws, and specific legal traditions along with the IMF's databases on the types of central bank liability (criminal, administrative, and/or civil).

For further information a copy of the working paper is available here.

(ii) Behavioural approach to financial supervision, regulation and central banking encouraged by IMF paper

On 2 August 2018, the IMF published a working paper (the "**Working Paper**") titled 'A Behavioral Approach to Financial Supervision, Regulation, and Central Banking'.

The Working Paper argues that behavioural elements such as:

- Behavioural social, legal and markets norms;
- Behaviour of others such as internalization and compliance; and
- Psychological biases.

Play a role in financial supervision, regulation and central banking which is currently not appreciated by supervisors, regulator and central banks. Furthermore the Working Paper argues that there are risks to ignoring individual and group behaviour and new laws, policies and interventions therefore need to address them.

The Working Paper concludes that further research is required in this field.

For further information please find a copy of the Working Paper here.

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

(i) EFAMA papers on sustainable finance package expressing support for European Commission sustainable finance package

On 5 September 2018, EFAMA released three position papers in which it gives its views in relation to the European Commission's sustainable finance package relating to (the "**Position Papers**").

The Sustainable Finance package is a legislative initiative put forward by the European Commission in an effort to make the European financial sector more active in tackling environmental, social and governance issues. The position papers released by EFAMA are presented in response to the European Commission's legislative proposals put forward in May 2018. The three position papers explore the following areas:

- **Taxonomy**: In this paper, EFAMA gives its support for a move towards the application of common language/terminology throughout the industry and puts forward a number of proposals which it feels will assist in achieving this aim (a copy of the paper can be viewed here);

- **Disclosures**: In this paper, EFAMA provides recommendations which it feels will help to ensure a high level of disclosure and transparency which will promote informed and qualified investment decisions regarding the integration of sustainability risks (a copy of the paper can be viewed here); and

- **Positive Carbon/Low Carbon impact benchmarks**: In this paper, EFAMA promotes the use of Low Carbon and Positive Carbon Impact benchmarks and sets out its recommendation in this regard for the move towards a more sustainable environment (a copy of the paper can be viewed here).

A copy of the press release from EFAMA which discusses the Sustainable Action Package generally may be viewed here.

(ii) EFAMA feedback on ESMA RTS 11 Consultation Paper

On 7 September 2018, EFAMA published its response to ESMA's Consultation Paper on Amendment to Commission Delegated Regulation (EU) 2017/588 ("**RTS 11"**) (the "**Consultation Paper**"), in which ESMA proposes amendments so as to as to provide that the tick sizes applicable to third country instruments are sufficiently and effectively correlated.

EFAMA's feedback on the Consultation Paper can be found here.

(iii) EFAMA publish Tenth Edition of it overview of Asset Management in Europe

On 24 September 2018, EFAMA published the Tenth Edition of its Facts and Figures on Asset Management in Europe (the "**Publication**").

The Publication uses data collected from an EFAMA questionnaire which is distributed to national member associations to present findings relating to financial assets managed through investment funds and discretionary mandates. The Publication looks specifically at the following areas:

- The role of third party asset managers;
- Assets under Management in Europe;
- Clients of the European Asset Management Industry;
- Asset Allocation in Europe;
- Industry Organisation; and
- Statistical Analysis of the Asset Management Industry (note that one of the more noteworthy figures from this section is the finding that the total value of assets under European management rose by 10% in 2017).

A copy of the Publication can be found here.

(iv) EFAMA publish response to EBA Consultation Paper on draft Guidelines on Outsourcing Arrangements

On 24 September 2018, EFAMA published its response to the EBA consultation on draft guidelines on outsourcing arrangements (the "**Guidelines**") (the "**Response**").

The Guidelines provide instruction on the internal governance procedures that institutions, payment institutions and electronic money institutions should put in place when they outsource functions and in particular with regard to the outsourcing of critical or important functions. The EBA invited feedback on the Guidelines and the deadline for submission of same was 24 September, 2018. EFAMA make the following points in the Response:

- Urges the EBA to clarify the scope and application, particularly with regards as to whether sectoral legislation for banks' subsidiaries, where applicable to outsourcing arrangements, will prevail against the CRD rules;
- Seeks clarification on how the guidelines are to apply to at solo level for the subsidiaries of a credit institution;

- Urges flexibility in terms of guidance on the contractual phase of outsourcing arrangements, highlighting the bespoke nature of outsourcing agreements; and

- Emphasizes the importance of a risk management process in outsourcing arrangements and welcomes the role of the register (as outlined in the Guidance) in this regard.

A copy of the Consultation Paper of the Guidelines can be viewed here and a copy of the Response can be viewed here.

Financial Stability Board ("**FSB**")

(i) FSB Consultation Report Infrastructure Finance Reform

On 18 July 2018, the Financial Stability Board (the "**FSB**") published a consultative document entitled "Evaluation of the Effects of Financial Regulatory Reforms on Infrastructure Finance" (the "**Consultative Document**").

The Consultative Document seeks to analyse whether the reforms in the financial sector have had the desired outcome. This publication is the first part of the initial evaluation under the FSB framework for the post-implementation evaluation of the effects of the G20 financial regulatory reforms. The second part, due in 2019, involves an evaluation of the effects of reforms on the financing of small and medium-sized enterprises.

The following observations were made by the FSB in the Consultative Document:

- Recent financial Regulation has not destabilised or damaged the availability of infrastructure finance, with macro-economic financial conditions and government policies remaining the primary drivers;

- There has been an increase in the amount of and variety of sources of infrastructure finance available, following a brief dip in the wake of the global financial crisis;

- Infrastructure lending spreads and loan maturities provided by bank lenders has lessened in recent years; and

- New financing models and market participants have led to greater diversity in the sources of infrastructure finance, particularly in the later operational stage of projects.

The FSB invited feedback in relation to the Consultation Document, the deadline for which was 22 August 2018. The FSB plan to issue a report summarising feedback in November 2018.

A copy of the Consultative Document may be found here.

(ii) FSB launches thematic peer review into LEI implementation

On 16 August 2018, the FSB announced via a press release, that it had begun conducting a thematic peer review into implementation of the legal entity identifier ("**LEI**") and that it was seeking comment from stakeholders in relation to same (the "**Peer Review**").

The FSB as part of its review will:

- Assess whether current levels and rates of LEI adoption are sufficient to support the ongoing and anticipated needs (particularly the financial stability objectives) of FSB member authorities;
- Appraise the types of private sector uses of the LEI (e.g. to implement risk management frameworks, support financial integrity, reduce operational risks, or support higher quality and more accurate data) as well as the benefits measured or anticipated from such uses (including any quantification of the benefits, to the extent possible);
- Assess ways to promote further adoption of the LEI, including specific areas where increased LEI uses would be the most favorable from a cost-benefit perspective; and
- Identify the challenges in further advancing the implementation and use of the LEI.

Stakeholders (i.e. financial institution, industry and consumer associations) were invited to submit feedback on a number of areas regarding LEI implementation as outlined in the Peer Review by the 21 September 2018.

The FSB is set to publish a report setting out its findings, in the first half of 2019.

The press release can be found here.

European Central Bank ("**ECB**")

(i) New Services Procurement Guidelines for the TIBER-EU Framework published by ECB

On 7 August 2018, the ECB published the 'Threat Intelligence-based Ethical Red Teaming ("**TIBER-EU**") Framework – Services Procurement Guidelines' which set out the different elements of TIBER-EU test procurement.

TIBER-EU is a framework that allows NCAs and financial services institutions to establish programmes to test and improve their resilience against sophisticated cyber-attacks. The Guidelines are divided into three sections which set out:

- The requirements and standards to be reached by threat intelligence and red teaming providers if the tests are to be recognised by TIBER-EU;

- Guiding principles and selection criteria to assist entities choose prospective providers; and

- Questions and agreement checklists that may be utilised by entities when they undertake to perform their due diligence and look to formalise the procurement process with providers.

The Guidelines are intended for NCAs and European Union authorities charged with the responsibility of the adoption, implementation and management of the framework, entities intending to undertake the TIBER-EU tests, entities intending on providing the tests, organisations intending on providing cyber threat intelligence services under TIBER-EU and accreditation and certification providers.

For further information on the Guidelines please click here.

(ii) The ECB publishes Opinion on the review of prudential treatment of investment firms

On 24 August 2018, the ECB published its opinion (dated 22 August 2018) (CON/2018/36) on the European Commission's legislative proposals for a new framework for the prudential regulation of investment firms.

Previously in January 2018, the ECB received requests from the European Parliament and the Council of the European Union, respectively, for an opinion on the following:

- A proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending the Capital Requirements Regulation (Regulation 575/2013) ("**CRR**"), Markets in Financial Instrument Regulation (EU) No 600/2014 ("**MiFIR**") and the EBA Regulation (EU) No 1093/2010 ("**EBA Regulation**") (Collectively the "**Proposed Regulations**"); and

- A proposal for a Directive of the European Parliament and of the Council on the prudential supervision of investment firms and amending CRD IV Directive (2013/36/EU) ("**CRD IV Directive**") and the MiFID II Directive (2014/65/EU) ("**MiFID II Directive**") (Collectively the "**Proposed Directive**").

The ECB broadly supports the objective of the proposed legislation in setting out a prudential framework that is better adapted to the risks and business models of different types of investment firms.

The EBA's requested opinion covers matters including the following:

- Classification of investment firms as credit institutions;

- Authorisation of certain investment firms as credit institutions;

- Statistical implications of changing definitions;

- Macro-prudential perspective on investment firms;
- Provision of services by third-country firms; and
- Alignment of the proposals with the CRD IV Directive, the CRR and the MiFID II Directive.

A copy of the opinion, the Proposed Regulations and the Proposed Directive can be accessed here.

European Systemic Risk Board ("**ESRB**")

(i) ESRB Annual Report 2017

On 9 July 2018, the ESRB published its Annual Report 2017 (the "**Report**") which provides an overview of systemic risk analysis, policy measures to address such risks and compliance with its ESRB recommendations. The Report is published as part of the ESRB's accountability obligations. The Report identified four main material threats to the stability of the European Union financial sector, namely:

- Repricing of risk premia in global financial markets;
- Persistent weaknesses in banks, insurers and pension schemes balance sheets;
- Debt sustainability in the sovereign, corporate and household sectors; and
- Vulnerabilities in the shadow banking system and other risks to the wider financial system which was highlighted in the two previous ESRB Annual Reports. An abrupt reversal of global risk premia is seen as a prominent risk to financial stability.

A copy of the Report can be found here.

(ii) ESRB publish study showing credit risk transmission to the non-financial sector in Europe is significant

On 19 July 2018, the ESRB published a working paper titled 'Analyzing credit risk transmission to the non-financial sector in Europe: a network approach' (the "**Working Paper**").

The assessment seeks to determine the extent credit risk in the financial sector spreads to the non-financial corporate sector based on credit default swap ("**CDS**") data. The Working Paper conducted an analysis of 152 CDS series between October 2006 and July 2017 for European financial institutions, sovereigns and non-financial corporations. The primary findings indicated:

- A sectoral clustering in the CDS network with the financial institutions located at the centre of the network showing the systemic importance of the financial sector in Europe;

- A geographical component with countries presenting different risks of transmission;

- Risk transmission to the non-financial sector increases during crisis events such as the Lehman bankruptcy and European debt crisis with Autos & Industrials along with TMT corporations affected the most during the global banking crisis; and

- Risk transmission within the non-financial sector is largely unaffected during crisis events;

- The study concluded that financial and sovereign risk affect corporate credit risk significantly and calls for further study to be conducted in this field.

For further information please find a copy of the Working Paper here.

(iii) Paper examining whether 'lending standards indicate whether a credit boom is good or bad?' published by IMF

On 19 July 2018, the ESRB and the IMF published a working paper titled 'Lending standards and output growth'. The working paper examines whether lending standards can impact whether a credit boom is good or bad.

The paper notes that being able to determine whether a credit boom is good or bad contemporaneously is highly important from a policy perspective. The mechanism to determine whether a credit boom is good or bad in this study is through the examination of lending standards opposed to macroeconomics as the latter has had limited success. Information on lending standards was sourced from primary debt capital markets. The paper also considers why credit booms may lead to recession.

The paper finds that lending standards can indicate whether a credit boom is good or bad and identifies that credit booms with a rising high-yield share are followed by lower output growth over the subsequent three to four years i.e. a bad credit boom. The paper calls for policy makers to pay particular attention to such credit booms.

For further information on the paper please find a copy of it here.

(iv) Study examining the degree financial stress is contagious in U.S. banking institutions

On 2 August 2018, the ESRB published a working paper titled 'The role of contagion in the transmission of financial stress'.

The working paper examines the role of contagion when looking at the financial stress in the United States' banking system attempting to identify whether spill-over may be identified as the cause of financial stress in certain circumstances. The presence of a contagious aspect was suspected due to financial crises occurring in regional clusters.

The Working Paper found that contagion is a major contributing factor to distress in the banking system and may be attributed as a meaningful portion of the cause of default probabilities in banks. The study also found that certain institutions are systemically more relevant than others and the degree of relevance is not necessarily proportionate to the size of the institution. This was deducted from evidence of significant heterogeneity of institution level spill-overs.

For further information please find a copy of the working paper here.

(v) Study conducted on Implication of macroeconomic volatility in the Euro area published

On 2 August 2018, the ESRB published a working paper titled 'Implication of macroeconomic volatility in the Euro area' (the "**Working Paper**"). The study examines impacts of uncertainty and macroeconomic consequences together in the multi-country setting of the Euro area.

The study finds that following an uncertainty shock all countries over the period of a year experienced a decrease in real activity with equity prices and employment along with a decline in short-term interest rates and exports. The study also found that the dynamic responses from Ireland, Slovakia and Greece differed for some macroeconomic fundamentals more than other countries within the Euro area.

For further information please find a copy of the Working Paper here.

(vi) ESRB Recommendation on macroprudential policy framework published in the Official Journal of the European Union

On 21 September 2018, the European Systemic Risk Boards ESRB/2018/5 amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of, and voluntary reciprocity for, macroprudential policy measures was published in the Official Journal of the European Union.

The ESRB/2018/5 Recommendation recommends that relevant authorities reciprocate certain specified macroprudential policy measures that have been adopted by the relevant authorities in Belgium, Estonia and Finland.

A copy of the ESRB/2018/5 Recommendation can be accessed here.

European Commission

(i) Consultation Paper published to review Commission's efforts to attain better regulation in the European Union

On 17 July 2018, the European Commission published a consultation paper to assess whether the changes introduced and/or updated by the better regulation package of May 2015 which comprise of evaluations, impact assessments, stakeholder consultations, the Regulatory Scrutiny Board, the REFIT Platform and the REFIT Programme have enabled the European Commission to attain their goal under the Junker administration of better regulation in the European Union.

The consultation is seeking views from interested parties on aspects of the better regulation framework that have worked well and those where improvements are required. The deadline for the submission of such contributions is 23 October 2018.

A copy of the consultation paper is available here.

(ii) European Commission publishes Communication on protection of Intra-European Union Investments

On 19 July 2018, the European Commission published a communication to the European Parliament and the European Council in relation to the protection of investments within the European Union (the "**Communication**").

The Communication seeks to clarify that European Union law protects European Union investors' rights, and that investors can enforce these rights before national administrations and courts.

The Communication also emphasises that European Union investors can no longer rely on intra-European Union bilateral investment treaties ("**intra-EU BITs**"), as these treaties are illegal, as they overlap with the European Union single market rules and discriminate between European Union investors. For example, the European Commission through its reasoned opinions of 23 September 2016, sent a formal requests to Austria, the Netherlands, Romania, Slovakia and Sweden to terminate their intra-EU BITs.

Furthermore the recent preliminary ruling concerning the Achmea case, the European Court of Justice confirmed that investor-state arbitration clauses in intra-EU BITs are unlawful.

A copy of the Communication can be found here.

(iii) Technical Advices requested by Commission regarding sustainable finance proposals

On 1 August 2018, a letter addressed to the European Insurance and Occupational Pension's Authority ("**EIOPA**") and ESMA from the European Commission was published.

The letter requests the provision of technical advice from EIOPA and ESMA in relation to the proposals published by the European Commission in May 2018 on the subject of sustainable finance. Ultimately this will mean that level 2 measures adopted under directives including the Undertakings in Collective Transferable Securities Directive ("**UCITS**"), Alternative Investment Funds Managers Directive ("**AIFMD**"), Markets in Financial Instruments Directive II ("**MiFID II**"), Solvency II Directive and the Insurance Distribution Directive ("**IDD**") will need to be amended.

EIOPA and ESMA are requested to provide such advice by 30 April 2019.

For further information please find a copy of the letter here.

European Parliament

(i) Study published on FinTech competition law issues

On 10 July 2018, a study titled 'Competition issues in the Area of Financial Technology ("**FinTech**")' ("**Study**") was published by the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**").

The Study notes that the FinTech industry is yet to have an established practice regarding how to deal with competition concerns due to its very young and evolving nature. The Study sets out what constitute FinTech services, the market, users' perception and the providers of FinTech services before delving into the potential competition issues which may arise. The Study acknowledges that while certain competition issues in the FinTech industry may be similar to those dealt with in other sectors there are certain competitive issues which may arise exclusively in FinTech which it lists as including:

- Banking – A lack of clear regulatory standards in banking platform markets;
- Payments, transfers and forex – This has achieved the most attention from competition authorities with measures to ensure access to critical assets are enhanced;
- Digital currencies - Competition between currencies and between exchanges;
- Denial of access to alternatives to traditional banking activities such as card processor systems is another potential anti-competitive issue; and
- Wealth and Asset management - Fee policies of service providers and blurring of the boundaries of different types of services.

A copy of the Study is available here.

(ii) Draft Report on relationship between the European Union and third countries regarding financial services regulation and supervision and equivalence decisions adopted by ECON

On 11 July 2018, a press release reporting the adoption of a draft report on relationships between the European Union and third countries in relation to financial services regulation and supervision ("**Draft Report**") was published by the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**").

In the press release ECON calls for Members of the European Parliament ("**MEPs**") to be able to scrutinise decisions taken by the European Commission to determine whether a third country's rules are equivalent to the European Union's. ECON opines that MEPs should be able to scrutinise the European Commission's decisions and determine whether such decisions should be adopted, withdrawn or suspended. More transparency in the decision making would be required for MEPs to carry this out. Consequently, ECON calls for decisions on equivalence to be taken via a delegated act.

Other proposals put forward by ECON in the Draft Report first published in April 2018 which has been adopted include:

- Introducing a 'structured horizontal framework' to recognise and supervise third country's deemed to have equivalent regimes;
- Giving the European Supervisory Authorities ("**ESAs**") the authority to advise the European Commission;
- Empowering the ESAs to review developments in third countries;
- Requiring the European Commission to report to the European Parliament on an annual basis on all decisions;
- Emphasises that Brexit may have a significant impact on supervision and regulation of financial services.

On 11 September 2018, the European Parliament adopted the resolution on relationships between the European Union and third countries concerning financial services regulation and supervision.

In a provisional edition of the resolution, the European Parliament recommends that third countries keep the ESAs informed of any national regulatory developments through the European Union's future equivalence framework and for the European Commission to provide a clear framework for the application of equivalence procedures introducing a standardised process for the determination of equivalence.

A copy of the press release can be found here, the Draft Report here and the provisional edition of the resolution is accessible here.

(iii) Draft Reports for ESFS Reforms published by ECON

On 12 July 2018, a draft report on the proposal for an Omnibus Directive amending Markets in Financial Instruments Directive II 2014/65 ("**MiFID II**") and Solvency II was published by the European Parliament's Economic and Monetary Affairs Committee.

The draft report contains a one page legislative resolution from the European Parliament which proposes to amend Article 1, paragraph 1., point 9 of the Omnibus Directive in relation to a section therein purporting to amend Article 93(1) of the MiFID II Directive by the deletion of the wording "Member States shall apply those measures from 3 January 2018" to "Member States shall apply the measures from [x]". A copy of the draft report is available here.

A draft report dated 10 July 2018 on the regulation amending the Regulation on EU macro-prudential oversight of the financial system and establishing a European Systemic Risk Board 1092/2010 ("**ESRB Regulation**") ("**Amending Regulation**") was also published by ECON. The draft report proposes eleven amendments to the Amending Regulation. A copy of this draft report is available here.

Both the Omnibus Directive and the regulation amending the ESRB Regulation form part of the European Commission's plan to reform the European System of Financial Supervision ("**ESFS").**

(iv) Proposal for a Regulation on the law applicable to third party effects of assignments of claims

On 25 July 2018, the Council of the European Union published the European Economic and Social Committee's ("**EESC's**") opinion on:

- A communication from the European Commission on the applicable law to the proprietary effects of transactions in securities (COM(2018) 89 final);
- A proposal for a directive and regulation on cross-border distribution of collective investment fund (COM(2018) 92 final – 2018/0041 (COD));
- A proposal for a regulation on the law applicable to the third party effects of assignments of claims (COM(2018) 96 final – 2018/0044 (COD));
- A proposal for a regulation on facilitating cross-border distribution of collective investment funds (COM(2018) 110 final – 2018/0045 (COD)) (the "**Opinion**").

In the Opinion the EESC's observations and recommendations include that the EESC:

- Supports all the systematic measures being taken to launch the key aspects of the Capital Markets Union by 2019;

- Agrees with the European Commission regarding the primary regulatory barriers to the cross-border distribution of investment funds which include marketing requirements, regulatory fees, notification procedures and administrative requirements at national level. The EESC however notes that there are other existing obstacles that have not been addressed in the proposals such as the harmonisation of tax rules;

- Is of the opinion that the primary cause of the existing obstacles to cross-border distribution of investment funds is not due to the inadequacy of the current regulations and directives but rather due to a lack of detailed guidance and instructions from ESMA and suggests that the new proposals should therefore be accompanied by detailed instructions from ESMA to ensure uniform implementation across the European Union;

- Is of the opinion that national provisions for charging structures should be clearly defined, unambiguous and consistent across the European Union with "national inventiveness" to be discouraged;

- Supports the aim of improving transparency in regulatory fees which will facilitate the cross-border distribution of funds and notes that the role of ESMA is crucial in this regard;

- Calls for strict rules to be introduced that are for systematic notification of marketing communications to prevent practices that fragment the single market; and

- Welcomes the introduction of an ESMA database however provides that additional notification requirements should only apply to national authorities and not to asset managers.

For further information please find a copy of the Opinion here.

(v) Responses to the Commissions Proposed Crowdfunding Regulation published: Opinion from EESC and Draft report from ECON

On 2 August 2018, the EESC published its opinion on the European Commission's proposal for a Regulation on European crowdfunding service providers ("**CSPs**") 2018/0048 ("**Proposed Crowdfunding Regulation**") and the Directive amending the Directive on Markets in Financial Instruments 2014/65 ("**MiFID II**").

In the opinion the EESC provides that it "strongly welcomes" the proposals which will build a framework to enable crowdfunding and calls for action to be taken for the framework to be put in place quickly. In particular the EESC applauds that the financing of small, young and innovative enterprises has been considered in the proposals given the importance of crowdfunding to such entities. Describing the proposals as forward looking the EESC welcomes that the proposals assist the innovation of products and solutions of modern

technology and adds a cross-border dimension assisting the deepening on the capital markets union by ensuring the same rules for entrepreneurs and investors apply.

The EESC makes a number of recommendations which are:

- Greater focus on the risk aspects associated with crowdfunding operations and markets to identify them and mitigate against them;

- Transparency and protection of investors – that risk assessment of specific projects on crowdfunding platforms should be subject to appropriate measures to identify and mitigate risks both financial and non-financial, such as that under the MiFID approach, instead of leaving such role to the markets and investors as provided in the Proposed Crowdfunding Regulation. This would also ensure that there is not an uneven playing field between the traditional providers of funding and the emerging providers.

- NCAs should have a more significant supervisory role;

- The provisions in the Proposed Crowdfunding Regulation subjecting crowdfunding platforms to rules fighting money laundering and terrorism financing need to be extended and strengthened;

- The proposals should not be silent regarding tax treatment of income from crowdfunding and tax obligations on debtors and discussions addressing this aspect should be had.

Furthermore the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") published their views on the Proposed Crowdfunding Regulation in a draft report ("**Draft Report**") published on 13 August 2018. The Draft Report which remains to be adopted by ECON in a vote contains:

- A legislative resolution setting out the amendments suggested by ECON to the European Commissions Proposed Crowdfunding Regulation; and

- Explanatory statement in which ECON welcomes the European Commissions Proposed Crowdfunding Regulation and summarises the changes it would make to the Proposed Crowdfunding Regulation.

These changes include:

- An increase to the threshold proposed for crowdfunding offers to be raised to eight million euro from one million euro;

- Having the NCAs as the primary supervisory authority of crowdfunding platforms instead of ESMA;

- Introducing different disclosure requirements for crowdfunding platforms that facilitate matching investors and project owners and platforms that determine the pricing and packaging of offers thereby providing more proportionate regulation based on activities and risk;

- Including initial coin offerings ("**ICOs**") to the subjects of the Proposed Crowdfunding Regulation;

- Third country CSPs should be able to avail of a passporting service across Member States provided they are authorized by their NCA and they adhere to the same rules as CSPs with a European passport.

The Proposed Crowdfunding Regulation was first adopted by the European Commission in March 2018. Once the Draft Report is adopted by ECON in plenary it will be considered by the European Parliament.

For further information a copy of the Opinion is available here, the Draft Report is available here and the Proposed Crowdfunding Regulation is available here.

ESMA, EBA and ESAs

(i) ESMA publishes 2017 Annual Report

On 3 July 2018, ESMA published its Annual Report for 2017. The Annual Report addresses a number of topics, including:

- Promoting Supervisory convergence: implementation of Markets in Financial Instruments Directive II ("**MiFID II**") and Markets in Financial Instruments Regulation ("**MiFIR**");

- Assessing risks to investors, markets and financial stability: focus on data quality;

- Work on completing a single rulebook for European Union financial markets: Benchmarks and Capital Markets Union;

- Direct supervision: Supervision of Credit Rating Agencies ("**CRAs**") and Trade Repositories ("**TRs**") and their ancillary activities; and

- The work of the Joint Committee, a central point for coordination and exchange of information between the European Supervisory Authorities ("**ESAs**") and the European Commission and the European Systemic Risk Board.

The Annual Report, dated 15 June is available here.

(ii) ESMA publishes response to EU consultation on Fitness Check

On 17 July 2018, ESMA published its response to the European Commission Consultation Document seeking feedback to evaluate the Fitness of the EU framework for public reporting by companies.

ESMA's response focused on matters falling under the remit of securities regulators. In its response, ESMA addresses its strong disagreement with the introduction of the possibility to modify the content of the International Financial Reporting Standards ("**IFRS**") as issued by the International Accounting Standards Board, noting that the EU should show leadership in reaffirming its commitment to IFRS.

ESMA also urges the Commission to provide certainty to market stakeholders by swiftly endorsing the draft RTS on European Single Electronic Format. The report goes on to address the issues of endorsement criteria, non-financial information and enforcement.

The ESMA response and an accompanying press release are available here.

(iii) EBA publishes updated Risk Dashboard Data for Quarter 1, 2018

On 19 July 2018, the EBA published its risk dashboard for Quarter 1, 2018 (the "**Risk Dashboard**"). The EBA publishes the Risk Dashboard on a quarterly basis, in accordance with its obligations under the EBA Regulation.

The purpose of the Risk Dashboard is to give a summary of the principal threats and weaknesses of the European Union banking industry by using a combination of quantitative risk indicators, analysis from banks and information gathered from the EBA's risk assessment questionnaire.

The Risk Dashboard sets out some key observations which include the following:

- European banks' capital ratios remained high, albeit with slight decrease in the first quarter of 2018;
- European Union banks continued to improve the overall quality of their loan's portfolios – EBA stated that in Q1 2018, the average ratio of non-performing loans ("**NPL**") continued its downward trend, reaching its lowest level since Q4 2014;
- Profitability remains a concern for the European Union banking sector – The EBA has stated that the low profitability and widespread dispersion for some countries, along with high operating costs, continues to dampen the profitability prospects for the European banking sector as a whole; and
- The loan to deposit ratio remained broadly stable in Q1 2018 – The EBA highlighted that in March, the average liquidity coverage ratio ("**LCR**") was 147.0%, well above the threshold defined as the liquidity coverage requirement for 2018.

A copy of the Risk Dashboard may be found here.

(iv) ESMA publishes Peer Review Methodology

On 20 July 2018, ESMA published its peer review methodology (the "**Methodology**") setting out its processes and tools for conducting peer reviews of NCAs.

ESMA is required pursuant to the ESMA Regulations to periodically organise and conduct peer reviews of some or all of the activities of the competent authorities, with the aim of strengthening consistency in their supervisory outcomes.

This Methodology, which should be read together with the ESMA Regulations and the Terms of Reference of the Supervisory Convergence Standing Committee ("**SCSC**"), covers the following areas:

- Determining the topic and focus for a peer review;
- Setting up an assessment group ("**AG**") led by a Coordinator and its mandate;
- The questionnaire that will be drafted by the AG and provided to each participating NCA;
- On-site visits – the Methodology provides that for a peer review that includes visits, the Board of Supervisors ("**BoS**"), upon a proposal by the AG and after consultation with the SCSC, designates the NCAs to be visited;
- The contents of the report by the AG;
- The Peer Review report to the BoS;
- Decisions by the BoS and publication; and
- Implementation and follow-up.

A copy of the Methodology can be found here.

(v) Securities Markets Stakeholders Group publish its Summary of Conclusions meeting from 25 May 2018

On 27 August 2018, the Securities Markets Stakeholders Group ("**SMSG**"), which facilitates consultations between ESMA and its stakeholders, published its 'Summary of Conclusions' meeting (the "**Report**") from the 25 May 2018, which includes topics discussed such as:

- A report from the Steering Committee;
- Financial Technology;

- Sustainability;
- Costs and charges;
- ESMA Work Programme; and
- KIID disclosure rules.

A copy of the full Report can be accessed here.

(vi) The Joint Committee of ESA report no immediate action required in 'automation in financial advice'

On 5 September 2018, the Joint Committee of the European Supervisory Authorities ("**ESAs**") (i.e. EBA, EIOPA and ESMA) published a report setting out key findings following its completion of a survey involving NCAs over the past two years.

This report confirms that the risks and benefits of 'automation in financial advice' identified in their original discussion paper and related report ("**ESA 2016**") have not materialised. In light of this finding and considering the limited growth of the phenomenon, the ESA believes that no immediate action is necessary. The ESA's analysis shows that:

- The overall number of firms and customers involved in automated financial advice still seems to be quite limited;
- The risks and benefits of 'automation in financial advice', which were originally identified by the ESAs in their original discussion paper and related report, have been largely confirmed by NCAs and seem to still be valid;
- In terms of emerging business models, it appears that automated services are being offered through partnerships, by established financial intermediaries, rather than by pure Fintech firms; and
- While some trends seem to have emerged (such as the use of Big Data, chatbots and extension to a broader range of products), there seems to have been no substantial change to the overall market since the publication of the ESA report on automation in financial advice in December 2016.

Further monitoring by the ESA is expected if and when the development of the market and market risks warrant it. Copies of the ESA's report can be accessed below:

- The ESA's 2018 report can be accessed here; and
- The ESA's 2016 report can be accessed here.

(vii) ESMA publishes Risk Dashboard for Quarter 2, 2018

On 6 September 2018, ESMA published its risk dashboard for Quarter 2, 2018 (the "**Risk Dashboard**"). The Risk Dashboard provides details of the risks in the European Union's securities markets for that period and provides the sources of such risks and summarizes how these risks affected market systems, investors and infrastructure and services.

The Risk Dashboard provides that ESMA's outlook for liquidity, contagion and credit risk remains unchanged, however operational risk is elevated, with a negative outlook, as cyber threats and Brexit-related risks to business operations remain major concerns.

ESMA also provided that going forward, European Union financial markets can be expected to become increasingly sensitive to mounting political and economic uncertainty from diverse sources, such as weakening economic fundamentals, transatlantic trade relations, emerging market capital flows, Brexit negotiations, and others. EMSA stated that assessing business exposures and ensuring adequate hedging against these risks will be a key concern for market participants in the coming months.

A copy of the Risk Dashboard can be found here.

(viii) ESMA publishes Trends Risk and Vulnerabilities Report

On 6 September 2018, ESMA published the latest edition of its Trends, Risk and Vulnerabilities Report for the first half of 2018 (the "**TRV Report**"). The TRV Report examines the performance of securities markets, assessing both trends and risks in order to develop a comprehensive picture of systemic and macro-prudential risks in the European Union, to assist both national and European Union bodies in their risk assessments.

The TRV Report provided that the overall risk levels for the European Union's securities markets remained stable but at high levels for most risk categories. Equity and bond volatility spikes in February and May reflected the growing sensitivities. ESMA also sees a deterioration in outstanding corporate debt ratings, and in corporate and sovereign bond liquidity.

Finally, investor risks persist across a range of products. Under the MiFIR product intervention powers, ESMA restricted the provision of CFDs and prohibited the provision of binary options to retail investors. The new measures started to apply from 1 August 2018 and 2 July 2018, respectively.

A copy of the TRV Report can be located on the following ESMA webpage here.

(ix) Joint Committee of the ESAs publishes report on the risks and vulnerabilities in the European Union financial system

On 11 September 2018, the Joint Committee of the ESAs published a report on the risks and vulnerabilities in the European Union financial system. The report sets out that in light of ongoing risks and uncertainties, such as Brexit, that supervisory vigilance and co-operation across all sectors remains key.

The ESAs are therefore advising that the following policy actions be taken by financial institutions and NCAs in the European Union:

- **Stress tests exercises** - Should continue to be conducted and developed across all sectors, with rising interest rates and the potential for sudden risk premia reversals should be factored into the scenarios;

- **Risk appetite of all market participants -** Supervisory authorities need to pay attention to risk appetites of market participants, with banks addressing their stocks of non-performing loans and adapt their business models to sustainable profitability and for financial institutions to carefully manage their interest rate risk;

- **Contagion risks** - Macro and micro prudential authorities should contribute to addressing possible contagion risks; and

- **Brexit -** European Union financial institutions, their counterparties, investors and retail consumers should plan appropriate actions to prepare for the United Kingdom's withdrawal from the European Union in a timely manner and the risks associated with a no-deal scenario.

A copy of the full Joint Committee report can be found here.

(x) ESMA finds heterogeneity in national markets for structured retail products

On 13 September 2018, ESMA issued a press release concerning a study it conducted on structured retail products ("**SRP**") available in the European Union, from an investor protection prospective (the "**Study**").

The Study found that while there was a high degree of diversity in the type of products sold across the European Union, national markets tended to concentrate on a small number of common types. The research set out in the Study breaks down the European Union market geographically into national retail markets and found a high degree of heterogeneity in the types of products sold.

The Study provided that SRPs in the European Union are a significant vehicle for household savings and that certain features of the products, notably their complexity and the level and transparency of costs to investors, warrant a closer examination of the market from the perspective of investor protection.

Consequently, ESMA believes that the market should be continuously monitored.

The press release is available here and the Study can accessed on the link set out in the press release.

(xi) Securities and Markets Stakeholder Group publish advice to ESMA on Commission Action Plan on Green and Sustainable Finance

On 20 September 2018, the SMSG published its advice to ESMA regarding on the topic of the European Commission's Action Plan on Green and Sustainable Finance (the "**Advice**").

The Advice provides a general overview of the considerations which ESMA need to take into account regarding its work on the Action Plan and specifically focuses on ESMA's work on the Action plan in terms of:

- Credit Rating Agencies;
- Corporate Reporting;
- Short-termism;
- Prospectus regulation;
- Benchmarks;
- Possible prudential incentive measures

A copy of the Advice can be viewed here.

(xii) ESMA Working Paper on liquidity in EU fixed income markets

On 25 September 2018, ESMA published a working paper entitled 'Liquidity in Fixed Income Markets – Risk Indicators and EU Evidence', in which it examines, generally, market liquidity in EU sovereign bond and corporate bond markets (the "**Working Paper**").

The results of the Working Paper show an increase in liquidity in the Sovereign Bond market, with a decrease in liquidity in the Corporate Bond market. The Working Paper examines the cause behind this trend and looks at the link between higher levels of stress in financial markets and a deterioration in market liquidity. The Working Paper also explores other main features in the European Sovereign Bond market.

A copy of the Working Paper can be found here**.**

(xiii) ESA's decision on Appeal regarding ESMA decision on binary option and contracts for differences

On 26 September 2018 the Joint Board of Appeal of the European Supervisory Authorities ("**the Board**") issued its decision in relation to an appeal brought by an individual against a decision of ESMA regarding binary options and contracts for differences, in which ESMA decided not to carry out a formal investigation into the Cyprus Securities and Exchange Commission ("**CYSEC**") for its actions in relation to claims made against a Cypriot Investment Firm, IronFX.

The Appellant contests that the case should be reopened and that a formal investigation be carried out, claiming a number of clients who, it is claimed, were damaged by the activities of IronFX Global Ltd (the "**Appeal**").

The Board relied on the case of SV Capital and Article 17(2) of the ESMA Regulation in deciding that the Board had no jurisdiction to hear the Appeal. This decision provides a good examination of the competency of the Board to hear such appeals.

A copy of the Appeal decision can be viewed here.

Market Abuse Regulation ("**MAR**")

(i) ESMA publishes three guideline compliance tables on MAR

On 25 September 2018, ESMA published three Market Abuse Regulation ("**MAR**") guideline compliance tables on:

- Guidelines on delay in the disclosure of inside information (ESMA70-145-67), which is available here;
- Guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (ESMA70-145-153), which can be accessed here; and
- Guidelines for persons receiving market soundings (ESMA70-145-66), which is available here.

Transparency Directive

(i) Central Bank updates its Guidance on Transparency (Regulated Markets) Law

On 14 September 2018, the Central Bank issued a notice of its intentions to amend its Guidance on Transparency (Regulated Markets) Law.

The amendments will reflect modifications to the Central Bank's document management and workflow system and are largely concerned with updating procedures for submitting standard documents to the Central Bank.

Given that the nature of the changes, public input is not being sought in this instance.

The schedule of changes can be accessed here.

Prospectus Regulation

(i) ESMA publishes Consultation Paper on Guidelines on risk factors under the Prospectus Regulation

On 13 July 2018, ESMA published for consultation its draft guidelines on risk factors under the Prospectus Regulation.

The draft guidelines aim to encourage appropriate, focused and more streamlined disclosure of risk factors, in an easily analysable, concise and comprehensible form. For example, the draft guidelines propose that risk factors be limited to those risks which are material and specific to the issuer and its securities and which are corroborated by the content of the prospectus.

The draft guidelines are addressed to NCAs in order to assist them in their review of the specificity and materiality of risk factors and of the presentation of risk factors across categories depending on their nature.

ESMA will consider all feedback received by 5 October 2018. The consultation paper is available here.

(ii) ESMA publishes Consultation Paper on minimum information content for prospectus exemption

On 13 July 2018, ESMA published a consultation paper setting out its draft technical advice on the minimum information required for a document that is made available to the public under the prospectus exemption.

In accordance with the Prospectus Regulation, issuers may offer/admit securities connected with a takeover, merger or division without publishing a prospectus, provided that an

alternative document is made available to investors which describes the transaction and its impact on the issuer.

The draft technical advice sets out the minimum information content of such a document provided for the purpose of describing a takeover, merger or division.

ESMA will consider all feedback received by 5 October 2018. The consultation paper is available here.

(iii) ESMA issues draft RTS under the Prospectus Regulation

On 17 July 2018, ESMA issued the final draft of its regulatory technical standards ("**RTS**") specifying the implementation of certain provisions in the Prospectus Regulation. The RTS address the following areas:

- Key financial information to be disclosed by issuers for the prospectus summary;
- Data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable;
- Advertisements disseminated to retail investors;
- Requirements to publish supplements to a prospectus;
- Publication of a prospectus; and
- Arrangements for the notification portal used for passporting prospectuses.

The draft RTS have been sent to the European Commission for endorsement, and are available here.

(iv) Minister for Finance signs Prospectus Regulations 2018 into law

On 16 August 2018, the Prospectus Regulations 2018 S.I. No. 317 of 2018 ("**New Prospectus Regulations**") were signed into law transposing the provisions of the Prospectus Regulation 2017/1129.

The New Prospectus Regulations updates the existing prospectus framework, which has become outdated as a result of several legislative and market changes, by repealing and replacing the existing framework. While some of the provisions in the New Prospectus Regulations took effect in July 2018, the remaining provisions will have an effective date from July 2019.

For further information please find a copy of the New Prospectus Regulations here.

(v) Central Bank updates its Prospectus Handbook

On 14 September 2018, the Central Bank issued a notice of its intention to amend the procedure and related sections of its Prospectus Handbook.

The amendments were driven by and reflect recent modifications to the Central Bank's document management and workflow system. Given that the nature of the changes, public input is not being sought in this instance. The changes are expected to take effect from 8 October 2018.

The schedule of changes can be accessed here**.**

Central Bank of Ireland

(i) Regulated Disclosures Submission Process updated

On 26 July 2018, the Central Bank published an article on its website providing an update to 'Enhancements to the Regulated Disclosures Submission Process' initiated in February 2018 under the 4th Issue of the Markets Update.

Under the 4th Issue of the Markets Update, the Regulated Disclosures teams in the Central Bank were mandated to upgrade their documents and to replace them with "submission templates".

The update sets out the progress made to the "submission templates" and reports that:

- User testing is being conducted;
- Submission templates will be available for use;
- Prior to the templates becoming available for use, instructions will be issued 7 to 10 days in advance detailing how the templates should be completed; and
- Further updates will be provided on an ongoing basis.

For further information please find a copy of the market update here and a copy of the 4th Issue here.

(ii) Central Bank publishes positive results in its Service Standards Report H1 2018

On 1 August 2018, the Central Bank published their 'Regulatory Service Standards Performance Report H1 2018' setting out the Central Bank's performance during the first half of 2018 regarding its compliance with standards and deadlines when authorising financial service providers and reviewing fitness and probity applications.

The Report provides statistics on the Central Bank's performance such as that 27 of the 29 standards which applied during the first half of 2018 were either met or exceeded.

In an accompanying statement in the press release the Deputy Governor Ed Sibley noted that courtesy of Brexit an unprecedented volume of applications have been made to the Central Bank, however by increasing the number of employees the Central Bank has managed to maintain a timely yet rigorous system when processing applications.

For further information please find a copy of the Report here and a copy of the accompanying press release is available here.

(iii) The Central Bank's Plans for Individual Accountability

The Central Bank wants more powers to make senior management in regulated entities accountable for their actions. It has set out these requests in different fora, including in its response to a Law Reform Commission paper which it published late last year (see previous article on the topic here) and in its recent report to the Minister of Finance on behaviour and culture in Irish retail banks (July 2018).

On 27 August 2018, the Central Bank's Director of Enforcement and Anti-Money Laundering has again set out its proposals for reform in the area.

What are the Central Bank's proposals?

The Central Bank wants an Individual Accountability Framework to be introduced which consists of the following:

- **Conduct Standards** – the Central Bank recommends that three sets of enforceable Conduct Standards should be introduced:

  (i) *Common Conduct Standards For All Staff In Regulated Entities* – These would require all staff in regulated entities to adhere to certain standards, including requirements to act honestly, ethically and with integrity and to be open and cooperative with the Central Bank/other regulators and to deal with them in good faith;

  (ii) *Additional Conduct Standards For Senior Management* – Additional conduct standards would be imposed on those performing pre-approval controlled functions ("**PCFs**") or who are captured by the Senior Executive Accountability Regime (see below), such as requiring them to take all reasonable steps to ensure that where they delegate a task it is delegated to an appropriate person and they oversee its delegation. The Standards would also, for example, require individuals in scope to take all reasonable steps to ensure that the business of the relevant firm is controlled effectively; and

(iii) *The Standards for Businesses* – These would apply to all firms regardless of the sector in which they operate and would include requirements around communications with customers, customers' interests and financial prudence, among others matters.

- **The Senior Executive Accountability Regime** (the "**SEAR**") – it is proposed that a SEAR would be applied initially to a sub-set of regulated entities (credit institutions, insurance undertakings, investment firms and their third country branches, with specified exemptions in each sector) where certain "*prescribed responsibilities*" set out by the Central Bank would be assigned to individuals performing Senior Executive Functions ("**SEFs**"). The SEFs would include board members, executives reporting directly to the board and heads of critical business areas. Each SEF would have a documented "Statement of Responsibilities" clearly setting out his/her role and area of responsibility. The Central Bank notes that this would make it harder for individuals to argue that the responsibility for wrongdoing lay elsewhere.

  The Central Bank also recommends that each in-scope firm would be required to produce a "Responsibility Map" documenting key management and government arrangements in a clear single source of reference.

- **Enhancements to the fitness and probity regime** – the Central Bank would like firms to be required to certify annually that all individuals performing controlled functions are fit and proper to perform their functions. The Central Bank has said it would also like the power to publish details of where it has refused to approve an individual's appointment to a PCF role and the power to investigate those who performed controlled functions in the past.

Other

Separately, the Central Bank has said that it would also like the legislation underpinning its Administrative Sanctions Procedure ("**ASP**") to be changed so it can pursue individuals directly in an enforcement action, without needing to show that the individual "participated" in some wrongdoing by the firm.

What does this mean?

The Central Bank cannot implement its proposals without legislative change and has recommended the introduction of such changes to the Minister for Finance. It has also acknowledged that even if it is given these powers, it would "*be a multi-year project*" before the Individual Accountability Framework would become operational, as it would need to be underpinned by policies, procedures and supporting guidance and the Central Bank would also consult with stakeholders.

However, if the proposals are introduced they will result in more exposure for senior management in regulated entities. Firstly, their areas of responsibility will be explicitly spelt out. Hopefully this will benefit everyone in terms of clarity but if the Central Bank deems that

there are issues which fall within an individual's remit, that person could find themselves personally on the hook for any failures. Senior managers will therefore want to ensure that they are receiving adequate support from their firm to discharge the functions which have been assigned to them.

In the future, the Central Bank expects to see more settlements with individuals under the ASP, as the Central Bank would be able to proceed against personnel directly instead of being required to tie their actions into a regulatory breach by the firm. To date only a small proportion of settlements have been with individuals, possibly due to evidential difficulties in bringing such cases. Lastly, where an individual's application to the Central Bank for approval to perform a PCF is refused, details of the refusal could potentially be published on the Central Bank's website, having negative consequences for the person's reputation.

A copy of the proposals from the 27 August 2018 can be accessed here.

(iv) The Central Bank releases its System Risk Pack August 2018

On 31 August 2018, the Central Bank released a System Risk Pack ("**SRP**") as a means of providing macro-prudential analysis to policy makers in the Irish financial sector. Each edition of the bi-annual publication draws from a broad range of data available to the Central Bank and presents indicators and visualisation methods for monitoring the financial system.

The August 2018 SRP can be accessed here.

(v) The Central Bank Governor sets our Macro-Financial Risk Management Agenda

On 5 September 2018, the Central Bank published a speech by Governor Philip R Lane's on Macro-Financial Risk Management delivered at the annual economics roundtable.

The Governor set out the macro-financial risk management agenda in light of the country's current favourable economic conditions. In addition to tackling legacy issues, such as the excessive stock of non-performing loans ("**NPL**"), the Governor highlighted the regulatory policies and national fiscal policies that the Central Bank are pursuing as a pro-active step to better prepare for future potential downturns.

The Governor's speech can be accessed here.

(vi) Director of Securities & Markets addresses SuperReturn CFO/COO Conference on the Principles of a well supervised Private Equity Market

On 10 September 2018, the Central Bank published the Director of Securities and Markets Supervision's remarks at the SuperReturn CFO/COO Conference entitled *"A Properly and Effectively Supervised Private Equity Market*".

In his speech, the Director identified five principles essential to a properly and effectively supervised private equity market. These principles include:

- A high level of protection for investors and market participants;
- Transparency as to the features of products and their market price;
- The market must be well governed;
- The market must be trusted; and
- The market must be resilient enough to continue to operate its core functions in stressed conditions and to innovate appropriately as markets evolve.

It is the Director's view that while there has been significant uptake in the growth and scale of private equity in Ireland and across Europe since the financial crisis, a robust regulatory framework is essential to mitigate the inherent risks in the private equity markets.

The Director's full speech is accessible here.

(vii) Director of Enforcement and Anti-Money Laundering sets out supervision and enforcement approach and priorities in speech

On 13 September 2018, the Director of Enforcement and Anti-Money Laundering for the Central Bank, Seana Cunningham (the "**Director**"), delivered a speech entitled '*Enforcement and AML – our approach and priorities'*. In her speech, the Director set out the Central Bank's approach and future priorities with respect to Anti-Money Laundering ("**AML**") and Countering the Financing of Terrorism ("**CFT**") supervision and enforcement.

The Director described the approach to AML/CFT supervision adopted by the Central Bank as a graduated risk based approach. At present, different levels of supervision are applied to firms based on the level of existing and emerging risks identified in each of the different sectors and firms. The Central Bank anticipates that their approach will continue to evolve in line with environmental demands.

Four priorities for the Central Bank in the area of supervision, include:

- Publishing AML/CFT guidelines to the Bill currently before the Oireachtas to transpose the Fourth European Union AML Directive;
- Promoting a top-down compliance culture;
- Continued engagement with industry on AML/CFT related technological innovations through the recently established unit the Innovation Hub; and
- Pursuing the introduction of a Senior Executive Accountability Regime to require firms clearly delineate the responsibility and decision making authority of senior personnel.

The Director also highlighted the Central Bank's three tiered approach to AML/CFT enforcement which comprises of an administrative sanctions regime, a fitness and probity regime and a protected disclosure regime.

Since 2006, €64 million euros have been imposed in administrative sanctions against firms that have committed regulatory breaches. The Director urged firms to pay attention to the statements on these settlements which will assist firms with future compliance. The Central Bank anticipates that future enforcement investigations will explore all possible angles of non-compliance and misconduct, including individual culpability.

The Central Bank remains committed to ensuring that individuals with questionable probity and fitness profiles are prevented from taking up or are removed from holding senior roles in the financial sector. Since the Central Bank's Fitness and Probity Regime came into effect, 57 applications have already been withdrawn by firms seeking to fill senior roles where the Central Bank has raised the prospect of a refusal.

Finally, the Central Bank will continue to focus on the protected disclosure regime which allows members of the public or staff of regulated firms to provide information directly to the Central Bank where regulatory wrongdoing is suspected. In the period June 2017 to June 2018, 113 protected disclosures were filed. The Central Bank expects that protected disclosure will continue to be an important component in their enforcement arsenal.

The Director's full speech can be accessed here.

(viii) The Central Bank publishes 2018 deadlines for fund applications

On 19 September 2018, the Central Bank published its 2018 deadlines for receipt of fund applications from Irish funds seeking a pre-Christmas or pre-year-end effective date.

The schedule of deadlines can be accessed here and for further information on the topic please read the Dillon Eustace here.

Department of Finance

(i) Press Release on continued development of Capital Markets Union

On 18 July 2018, the Department of Finance issued a press release containing the joint stance of Finance Ministers from Denmark, Finland, Latvia, Lithuania, Sweden, Estonia, the Netherlands and Ireland in which the importance of the continued growth of mobilisation of capital in Europe through the Capital Markets Union ("**CMU**") is discussed, particularly in light of Brexit.

The press release outlines the following steps which should be taken:

- Focussing on the outstanding areas of the CMU Action plan which have the potential to have the most positive impact;

- The increased use of financial technologies in the financial services industry to enhance effective and efficient co-operations;
- Focusing on maintaining a well-functioning supervisory regime to ensure the consistent application of programmes across the European Union; and
- Encouraging national reforms which will develop local capital markets.

A copy of the press release can be found here.

The Department of Business, Enterprise and Innovation

(i) Stakeholder Consultation seeking feedback on EU Single Market and InvestEU proposals

On 9 August 2018 the Department of Business, Enterprise and Innovation (the "**Department**") published a stakeholder consultation seeking feedback on the proposed EU Regulations on regarding the Single Market Programme and the InvestEU Programme (the "**Consultation**").

The Single Market Programme intends to amalgamate a number of activities which were previously financed under different programmes into one single programme, with the hope being that this will enable better access to market, prevent unnecessary administrative burden and ultimately increase competitiveness.

The InvestEU Programme intends to adapt the way in which financial instruments are offered in the EU so as to enable more efficient and effective investment in EU projects. The feedback received from the Consultation will go towards developing a united national response to the proposal. The deadline for the submission of feedback is 12 September 2018.

A copy of the Consultation can be found here.

Whistle-blowing

(i) The Irish government publishes statutory review of domestic whistle-blowers statute

On 15 July 2018, the Department of Public Expenditure and Reform published a 'Statutory review of the Protected Disclosures Act 2014 ("**PDA**")' ("**Statutory Review**").

The Statutory Review, conducted in accordance with Section 2 of PDA analyses its operation since being signed into law four years ago and identifies its impact, its operation in practice and issues and challenges it presents to workers and employers. The Statutory Review concludes that overall the PDA is having a positive effect on Irish society with an increase in the disclosure figures recorded each year since its entry into force, however further work to raise awareness is necessary. The Statutory review also seeks to determine

whether any amendments to the existing legislation are necessary and concludes that no amendments are necessary at this juncture.

The Statutory Review was subject to a consultation period which received twenty five submissions. Reference to some of the submissions is made throughout the Statutory Review.

For further information the Statutory Review is accessible here.

Euronext (formerly the Irish Stock Exchange)

(i) Migration of Euronext Dublin onto Euronext systems to take place November 2018

On 27 March 2018, the Irish Stock Exchange joined the Euronext federal model, and now trades as Euronext Dublin. As a consequence of this integration, the migration of a range of Euronext Dublin activities and instruments onto Optiq® and the related Euronext systems is planned to occur on 12 November 2018, pending regulatory approval.

On 9 July 2018, Euronext Dublin released an information note for clients setting out the timeline and details of the migration of a range of Euronext Dublin activities and instruments onto the Euronext platform.

This note is available here.

On 20 July 2018, Euronext Dublin released an information note for clients providing updates to the migration timeline and the technical specifications. More specifically, the note provides information on the availability of the Optiq® Order Entry Gateway ("**OEG**") and Market Data Gateway ("**MDG**") in the EUA test environment on 2 August 2018 and in the Saturn test environment on 3 September 2018. Euronext also published Optiq® (OEG and MDG) specifications.

This note is available here.

(ii) Euronext Dublin publish New Member Firm Rules

On 1 August 2018, Euronext Dublin published Release 23 of their Member Firm Rules. These rules govern the operations and activities of member firms on Euronext Dublin's markets. The rules are effective from 1 August 2018.

Release 23 of the Member Firm Rules is available here.

(iii) Version 7.0 of the Irish Stock Exchange Trading Platform scheduled for release

On 28 September 2018, Euronext announced the release of version 7.0 of their electronic trading system ("**ISE T7**") scheduled for 3 December 2018. Enhancements to the trading platform anticipated in version 7.0 include:

- Enhancements of quote functionality;
- Data format change of quantity fields to 8-byte fields with 4 Decimals; and
- Removal of connection gateways.

A T7 cloud simulation environment and a dedicated simulation environment are available to all members to test their trading applications independent of the production environment.

Supporting documentation in the form of information releases, preliminary versions and final versions will be available from the ISE website commencing in September 2018.

The press release can be accessed here.

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

(i) European Parliament issues Report on Virtual Currencies

On 2 July 2018, the European Parliament published a report on virtual currencies and the problems they pose to financial regulators (the "**Report**"). The Report looks at whether virtual currencies will threaten the dominant position of sovereign currencies and central banks.

The Report concludes that at present virtual currencies are not a threat to the status qua, but it recommends that regulations concerning virtual currencies to harmonised across the EU.

A copy of the Report may be viewed here.

(ii) Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018

On 3 July 2018, Dáil Éireann passed the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 (the "**Bill**") which proposes to:

- Amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "**Act of 2010**") in order to transpose, in part, the Fourth EU Money Laundering Directive (2015/849) into national law;
- Give effect to the recommendations of the Financial Action Task Force ("**FATF**");
- Increases the obligations on a range of entities, such as credit and financial institutions, lawyers, accountants and high-value goods dealers, in relation to money laundering and terrorist financing;
- Impose requirements on those entities relating to assessing the risks of money laundering and terrorist financing involved in carrying out their businesses;

- Putting policies in place to mitigate that risk and carrying out customer due diligence measures; and

- Set out functions and powers of the Financial Intelligence Unit of the Garda Síochána.

On 25 September 2018, the Bill is currently before Seanad Éireann, at Second Stage. The stage, history and text of the Bill can be accessed here.

(iii) Study on cryptocurrencies and blockchain conducted by European Parliament's Policy Department a highlights anonymity as key issue

On 4 July 2018, the European Parliament's Policy Department A's study requested by the TAX3 committee titled 'Cryptocurrencies and blockchain: legal context and implications for financial crime, money laundering and tax evasion' was published.

The research is limited to cryptocurrencies and blockchain and while it acknowledges that the fifth Money Laundering Directive will have a significantly positive impact on this area the study provides that the existing European legal framework is failing to deal with the issues arising in this area. The study provides that the key issue is the anonymity surround cryptocurrencies.

Policy recommendations developed from the study's findings regarding standards in the European Union which will be necessary despite the introduction of MLD5 are set out in the study. These recommendations include:

- The introduction of a system of mandatory registration of users to tackle the anonymity of cryptocurrency users;

- The expansion of the list of 'obliged entities' under MLD5 to include players identified in the study as at risk of providing a loophole for parties with mala fides. The risky areas currently outside of MLD5 include miners, pure cryptocurrency exchanges that are not also custodian wallet providers, software and hardware wallet providers, trading platforms and coin offerors;

- The imposition of a ban on the specific characteristics of cryptocurrencies designed to make it impossible to verify users;

- In the long term developing a comprehensive crypto-currency framework setting out standards and license requirements for providers of cryptocurrencies which could add a 'middleman' to those technologies which has specifically removed such middleman thereby providing an individual to be accountable to the authorities; and

- Not focusing on blockchain and leaving the technology 'be' as the development of the technology should be encouraged. It is therefore recognised as being separate from the underworld of money laundering, terrorist financing and tax evasion.

A copy of the study here and for further information on MLD5 please find a Dillon Eustace article setting out its primary provisions here.

(iv) Risk based approach to AML and CTF draft guidance published for consultation in the insurance sector and securities sector

On 6 July 2018, FATF published for public consultation two draft guidelines, namely the 'Draft Risk-based approach Guidance for the Life Insurance Sector' (**the "Draft Life Assurance Guidance**") and the Draft Risk-based approach Guidance for the Securities Sector (the "**Draft Securities Guidance**"):

- The Draft Life Assurance Guidance updates the 2009 guidance to align with the anti-money laundering ("**AML**") and counter terrorist financing ("**CTF**") standards introduced in 2012 by FATF which adopted a risk-based approach ("**RBA**"). The guidance is intended to be useful to parties in both the private and public sector. In the private sector the guidance is aimed at insurers and intermediaries providing investment-related insurance products such as life insurance, while in the public sector countries and competent authorities comprise of the target audience. The guidance seeks to assist the common understanding, design and implementation of a RBA to AML and CTF. Examples are utilised throughout the guidance of current practices and risks arising in such practices across various sectors. Mitigating techniques against these risks are also provided; and

- The Draft Securities Sector Guidance applies to the provision of securities products and services and it provides key principles for the application of the RBA to AML/CFT in the securities sector and seeks to assist market participants in its application. The guidance looks at how AML and CTF risks are to be identified, assessed and mitigated and provides useful examples of various supervisory practices used for the implementation of the RBA to the securities sector.

The consultation process for both Draft Guidelines ran until 17 August 2018 and comments in relation to whether the guidance provides sufficient clarity on the implementation process of RBA to firms in the private sector were welcomed in particular.

On 9 August 2018, Insurance Europe issued its response to the Draft Life Assurance Guidance. Insurance Europe welcomed the consultation and provided the following feedback in relation to the following areas of the Draft Life Assurance Guidance:

- Guidance for the private sector;

- The inclusion of an Annex on non-life insurance; and

- The inclusion of an Annex on reinsurance;

On 17 August 2018, the European Banking Federation (the "**EBF**") published its response to the Draft Securities Guidance. The EBF provides numerous observations and recommendations on the Draft Securities Guidance, including the following:

- The EBF is of the opinion that the Draft Securities Guidance should highlight the different categories of services/service providers;
- The EBF suggests that the Draft Securities Guidance should clarify whether its application is intended for the retail or wholesale sector and, if both, the EBF recommends adopting its definitions for "Retail Investor" and "Professional clients", as outlined in the EBF's response;
- The EBF feels that the Draft Securities Guidance should in its analysis differentiate between the distinct types of securities; and
- The EBF would welcome further clarification in relation to the "Securities Providers" chapter of the Draft Securities Guidance.

A copy of the Draft Life Assurance Guidance can be found here, a copy of the Draft Securities Guidance can be found here.

For a copy of Insurance Europe's response please see here and to view a copy of the EBF's response please see here

(v) Objectives of the US Presidency of FATF

On 17 July 2018, FATF published a paper from its incoming President, Mr. Marshall Billingslea setting out the objectives for FATF during his tenure as President of FATF from July 2018 to June 2019. In the paper the objectives of the FATF are set out as follows:

- Preventing the financing of the proliferation of weapons of mass destruction;
- Maintaining emphasis on combatting terrorist financing;
- Action against the expansion of virtual currencies;
- Financial and regulatory technologies;
- Private sector outreach; and
- Capacity building at FATF style-regional bodies.

A copy of the paper is available here.

(vi) FATF's Report on concealment of beneficial ownership published

On 18 July 2018, a report on the 'Concealment of beneficial ownership' ("**Report**") was published by FATF. The Report sets out its conclusions including:

- A "hide-in plain sight" strategy is the predominant scheme utilised by parties attempting to obscure their beneficial ownership;
- Limited liability corporations and nominee directorship services are some of the mechanisms used to facilitate money laundering, tax evasion and corruption;
- Shell companies are a "key feature" of schemes attempting to disguise beneficial ownership and notes that front companies and bearer shares are less frequently utilised to this end;
- Nominee directors and shareholders are key vulnerabilities;
- Use of professional enablers is a key feature noting that professionals may be assisting willingly or negligently and in particular lawyers were found to be less aware of their vulnerability for involvement particularly in comparison to accountants which has been considered a controversial finding in the context of the contrary finding by the United Kingdom's national risk assessment report published in October 2017; and
- 17% of jurisdictions participating in the FATF do not place AML or CTF obligations on professionals, which is a significant chink in the international armor.

For further information a copy of the report is available here.

(vii) FATF paper on AML and CTF for judges and prosecutors published

On 19 July 2018, FATF President's Paper titled 'Anti-money laundering and counter terrorist financing for judges and prosecutors' was published (the "**Paper**"). The Paper has three primary objectives:

- Strengthening the relationship between FATF and the criminal justice sector while also generating a framework to enhance international working relationships since these crimes generally occur in the international sphere;
- To prepare a report identifying difficulties facing judges and prosecutors when investigating and prosecuting money laundering, terrorist financing and when recovering the proceeds of crime and providing best practices for such scenarios; and
- To get FATF and FATF style regional bodies to work together on these elements to ensure an effective anti-money laundering and counter-terrorist financing system.

Research for this paper involved engaging with over four hundred judges and prosecutors across the globe making enquiries regarding their experiences, challenges, what they deem to be best practice and their knowledge.

A copy of this Paper is available here.

(viii) FATF Report to G20 Ministers and central bank governors focuses on crypto currencies and assets

On 19 July 2018, a Report to the G20 finance ministers and central bank governors setting out findings pursuant to its ongoing mandate issued in March 2018 to examine anti-money laundering and counter-terrorism financing was published by FATF. The Report addresses amongst other things:

- Whether changes ought to be introduced to its guidance and standards to be tailored specifically to virtual currencies and crypto-assets since the current guidance and standards make no specific reference to same and provides that detailed proposals on this subject will be presented in October 2018 – the next meeting; and

- The high priority of identifying beneficial ownership and provides the executive summary to the FATF Egmont Group '*report on the concealment of beneficial ownership'* in its Annex which includes an analysis on the role professional money launders play in such concealment.

A copy of the Report is available here and a copy of the report on the concealment of beneficial ownership is accessible here.

(ix) FAFT publish procedures for its latest round of AML/CFT evaluations

On 20 July 2018, FAFT published the procedures which it will follow when conducting its fourth round of AML/CFT Mutual Evaluations (the "**Procedures**"). Mutual evaluations are reviews of the level of implementation by FAFT members of the FAFT Recommendations.

The Mutual Evaluation will look at whether members can show technical compliance with the FATF Recommendations (2012). A copy of the Procedures can be found here.

(x) FATF provides updates on procedures regarding High Risk/Non-Co-operative Jurisdictions

On 23 July 2018, FATF provided an update in relation to its procedures regarding the monitoring of high risk/non-cooperative jurisdictions (the "**Publication**"). The Publication highlights FATF's continued commitment to identifying jurisdictions whose AML/CFT safeguards are deemed insufficient and vulnerable and which therefore potentially pose a risk to the wider financial community.

The Publication outlines the review process by which FATF will identify that a particular jurisdiction should be monitored and outlines the steps which follow once the initial identification has taken place. The Publication sets out that once a jurisdiction is deemed worthy of monitoring it shall be put on an action plan by FATF with the aim of correcting any identified issues. FAFT public statements and the process of removal of a jurisdiction from FATF monitoring is also outlined.

A copy of the publication may be viewed here.

(xi) G20 July meeting communique published

On 24 July 2018, the press release and communique setting out the conclusions reached at the G20 meeting of Finance Ministers and Central Bank Governors between 21 and 22 July 2018 was published ("**Communique**").

The Communique notes that among other things that the G20:

- Recognises that money laundering and terrorist financing risks are real and increasing, particularly in relation to crypto-assets;
- Are committed to fighting money laundering and terrorist financing and called for the full effective implementation of FATF standards; and
- Recognises the importance of clarifying how the FATF standards apply to virtual currencies and crypto-assets restating that FATF's report on the matter will be due by the next meeting in October 2018.

For further information a copy of the communique is available here and a copy of the press release relating to the meeting is available here.

(xii) FATF publish new Mutual Evaluations and Consolidated Ratings

For the period 1 July 2018 to 30 September 2018, FATF updated the consolidated assessment ratings which provides a summary of (1) the technical compliance and (2) the effectiveness of the compliance of the assessed parties against the 2012 FATF Recommendations and using the 2013 Assessment Methodology and 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.

(xiii) Report detailing identity and activities of professional money launderers published by FATF

On 26 July 2018, a Report on 'Professional Money Laundering' ("**PML**") (the "**Report**") was published by FATF. The Report is the first of its kind focusing exclusively on PML and in particular money-laundering threats opposed to vulnerabilities in the current framework.

The Report sets out the characteristics of professional money-launders noting that some act in a professional capacity including lawyers and accountants and even serve legitimate clients, while performing their criminal money laundering services on a part-time basis. The Report details the services money-launderers provide which include setting up the infrastructure to enable criminals and organised crime groups launder the proceeds of illegal activities to avoid anti-money laundering and counter terrorist financing safeguards in place.

Through the identification of the services provided by PMLs, the Report aims to provide supervisory authorities and countries with an enhanced ability to identify and thereby dismantle PMLs. The Report provides that by disrupting PMLs it will impact on the criminal organisations with which they are associated so that "crime does not pay".

For further information a full copy of the Report is available here.

(xiv) Commission Delegated Regulation (EU) 2018/1100 enters into force

On 7 August 2018, Commission Delegated Regulation (EU) 2018/1100 entered into force (the "**Delegated Regulation**"). The Delegated Regulation amends EC Regulation No 2271/96 which relates to the extra–territorial application of legislation adopted by a third country.

The decision to amend the Regulation was brought about by the United States withdrawing from the Joint Comprehensive Plan of Action, to which the European Union was party and deciding to re-impose certain sanctions on Iran.

A copy of the Delegated Regulation can be found here and a guidance note in relation to same may be viewed here.

(xv) Commission Implementing Regulation (EU) 2018/1101 published

On 7 August 2018, the European Commission published Commission Implementing Regulation 2018/1101 ("**Implementing Regulation**"). The Implementing Regulation sets out the processes and requirements which European Union economic operators are to satisfy if they are to be authorised to apply the sanctions which have recently been imposed on Iran by the United States.

A copy of the Implementing Regulation can be viewed here.

(xvi) Delegated Regulation setting RTS for CCPs under MLD4 published in the Official Journal of the European Union

On 10 August 2018, the Commission Delegated Regulation 2018/1108 setting out the regulatory technical standards ("**RTS**") relating to central contact points ("**CCPs**") pursuant to Article 45(11) of the Fourth Money Laundering Directive ("**MLD4**") was published in the Official Journal of the European Union.

The RTS set out the criteria to determine when a CCP for electronic money issuers and payment service providers may be appointed and rules regarding the functions of CCPs once appointed.

The RTS entered into force on 30 August 2018, having been adopted by the European Commission on 7 May 2018.

A copy of the Delegated Regulation is available here.

(xvii) Pakistan added to European Commission's list of 'high risk countries' under MLD4

On 22 August 2018, the European Commission published a Delegated Regulation amending Delegated Regulation 2016/1675 adding Pakistan to the list of third countries categorized as 'high-risk' ("**List**") pursuant to Article 9(2) of MLD4.

'High-risk' countries are countries that have inadequate anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") regimes and consequently pose a significant threat to the European Union's financial system. As a result of being added to the List, all firms will now have to apply enhanced due diligence ("**EDD**") when dealing with natural or legal persons from Pakistan.

On 18 September 2018, the Council of the European Union voted not to object to the delegated Regulation. Provided the European Parliament do not object to the Delegated Regulation, it will be entered into the Official Journal of the European Union and apply twenty days from its publication therein.

Pakistan's position on the List however will be reassessed by the European Commission once it completes the implementation of its action plan that it devised with the Financial Action Task Force. The European Commission has also been provided with a high-level written political commitment by Pakistan to address their AML and CTF deficiencies which it has also welcomed.

A copy of the new Delegated Regulation here.

(xviii) European Commission communication on strengthening AML supervision and revised legislative proposal on EBA AML mandate

On 12 September 2018, the European Commission published a communication on strengthening the European Union's framework for prudential and AML supervision for financial institutions.

The European Commission recommends a broader strategy designed to ensure that the supervision of financial institutions and markets is effective and robust when addressing money-laundering and terrorist financing.

The proposed strategy covers a range of short-term legislative and non-legislative measures that include:

- Addressing the absence of a clear obligation for prudential supervisors to cooperate with the relevant anti-money laundering authorities and bodies under the Capital Requirements Directive;
- Enhancing the mandate of the EBA to specify the modalities of cooperation and information exchange; and
- Optimising the use of expertise and resources dedicated to anti-money laundering related tasks.

In the long term, the European Commission seeks to transform the Anti-Money Laundering legislative framework as recommended by a joint working group, comprising the chairpersons of the ECB.

The communication is accessible here.

(xix) European Parliament adopts first reading position on proposed amendments to European Commission legislative proposals on AML/CFT

On 12 September 2018, the European Parliament adopted its first reading position on two legislative proposals put forward by the European Commission relating to AML and CFT, in which the European Parliaments introduces amendments to both texts. The legislation proposed include a:

- Proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the European Union and repealing Regulation (EC) 1889/2005; and
- Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law.

The next step regarding the proposed legislation is for the European Council to agree with the European Parliament on the proposed legislation and amendments put forward by the European Parliament.

A copy of the proposed legislation can be found here and a copy of the propose Directive can be found here.

(xx) The Central Bank issues Anti-Money Laundering Bulletin 5 on training standards for money remittance sector

On 19 September 2018, the Central Bank issued its second publication of the Anti-Money Laundering ("**AML**") bulletin in 2018. The bulletin is directed at firms in the money remittance sector and sets out the Central Bank's expectations regarding the implementation of an AML and countering the financing of terrorism ("**CFT**") agent training model.

The Central Bank expects firms in the money remittance sector to ensure, that:

- All agents receive mandatory training prior to commencement of services on behalf of the firm and that training is designed to reinforce their AML/CFT obligations as well as provides instructions on how to detect suspicious activity;
- Training materials are aligned with the Irish and European Union legislative requirements to manage money-laundering and terrorist financing risks and are regularly updated in light of emerging risks;
- Training is monitored and recorded and a measure is in place to deal with a failure to complete training;
- The role of the agent in detecting suspicious activity is not diminished in favour of an over reliance on systems; and
- The Board and Senior Management regularly receive management information on the implementation of the firm's AML/CFT training programme which is proportionate to the firm's nature, scale and complexity.

The Bulletin can be accessed here.

(xxi) Third quarter update on Proposal for a Directive on the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences

For the period 1 July 2018 to 30 September 2018, the European Commission published updates to the Proposal for a Directive of the European Parliament and of the Council laying down rules for facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision (the "**Directive**").

The updates are in the form of two cover letters addressed to the Council of the European Union and contain:

- A notification communicating the intention of the United Kingdom and Ireland to adopt the draft Directive ("**Cover Note 1**"); and
- The formal comments of the European Data Protection Supervisor's on the proposed Directive ("**Cover Note 2**").

Cover Note 1 can be accessed here and Cover Note 2 can be accessed here.

Anti-Corruption Legislation

(i) How companies can minimise the corruption conundrum

The Irish government identified the introduction of the Criminal Justice (Corruption Offences) Act 2018 (the "**Act**") as one of the key measures to be taken in the fight against white collar crime.

The Act which came into effect on 30 July 2018 contains six main offences – five of which apply to both the public and private sectors - as well as the section 18 offence, under which corporates can be prosecuted for corrupt acts committed by certain parties on their behalf.

For the first time, corporates can be prosecuted if someone acting on their behalf commits an offence under the Act.

For further information on the Act please refer to an article prepared by Dillon Eustace which was first published in Finance Dublin's September 2018 Edition, the full article can be accessed here.

Data Protection / General Data Protection Regulation ("**GDPR**")

(i) The Financial Stability Board publishes a draft Cyber Lexicon for public consultation

On 2 July 2018, the Financial Stability Board ("**FSB**") published a draft Cyber Lexicon for public consultation, which comprises a set of 50 core terms related to cyber security and cyber resilience in the financial sector. A lexicon could be useful to support work in the following areas:

- A cross-sector common understanding of relevant cyber security and cyber resilience terminology;
- Monitoring and assessing financial stability risks of cyber risk scenarios;
- Information sharing; and
- Work by the FSB, authorities and/or standard-setting bodies to provide guidance related to cyber security and cyber resilience.

The lexicon was developed from the October 2017 stocktake report on regulations and supervisory practices with respect to cyber security in the financial sector. The consultation closed to comments on 20 August 2018, with the lexicon finalised by November 2018.

A copy of the October 2017 stocktake report on regulations and supervisory practices can be accessed here, and the Cyber Lexicon consultative document available here.

(ii) Overview of Consumer's Rights under GDPR

On 3 July 2018, Insurance Europe published an overview of Insurance Consumers' main rights under GDPR. The publications sets out the following rights of the consumer:

- The right to be informed before your insurer can process your personal data;
- The right to know if your insurer holds your personal data, and if so the right to receive a copy of same;
- The right to ask your insurer to amend your personal data if it is not accurate;
- The right to have your data erased in certain circumstances;
- The right to have your data to be transferred to you or to another company;
- The right to object to your personal data being processed by your insurer; and
- The right to ask for human involvement in the processing of your data, as opposed to the use of a purely automated processing system.

A copy of the document is available here.

(iii) European Data Protection Board Second Plenary Meeting

On 4 and 5 July 2018, the European Data Protection Board ("**EDPB**") held its second plenary meeting. The various national data protection authorities which make-up the EDPB engaged in the following activities at the second plenary meeting:

- Discussed among other things: consistency and cooperation mechanisms, the one-stop shop mechanism, Internal Market Information System ("**IMI**"), challenges experienced and queries received by the authorities since 25 May 2018. Most data protection authorities noted a sharp increase in complaints of data breaches with thirty cross-border complaints in the IMI currently ongoing. Despite this, the chair of the EDPB reported that the work load is manageable.

- Adopted a letter addressed to the Internet Corporation for Assigned Names and Numbers ("**ICANN**") providing guidance on their development of a GDPR compliant model where personal data is accessed in relation to WHOIS – a query response protocol used for, among other things, identifying registered users or assignees of an internet resource such as a domain name, IP address block, etc.

- Adopted a letter responding to the European Parliament's queries in relation to ensuring that the implementation of the second Payment Services Directive is in keeping with GDPR.

- Meeting with the US Ombudsperson in relation to concerns raised by the Article 29 Working Party (the EDPB's predecessor) in relation to the Privacy Shield and in particular on issues including how the Ombudsperson interacts with the intelligence services in the United States. Conclusive answers to the various queries however were not answered at the meeting.

For further information on the plenary meeting please find a copy of the press release here.

(iv) Data Sharing and Governance Bill 2018 Update

In June 2018, the 'Data Sharing and Governance Bill 2018' (the "**Bill**") was published, following approval by the Government. The Bill has the objective of:

- Regulating the sharing of information, which includes personal data, between public bodies which occurs extensively at present;

- Regulating the management of information by public bodies;

- Establishing a base of registries;

- Collecting public service information;

- Establishing a data governance board; and
- Providing for related matters.

A copy of the Bill, as initiated on 12 June 2018, is available here.

The Bill is before Seanad Éireann, at Fifth Stage and can be tracked here.

(v) The European Agency for Network and Information Security and a new Cybersecurity Act

On 10 July 2018, the European Parliament issued a draft report and a press release on the '*Cybersecurity Act: build trust in digital technologies*' that a new certification framework for connected devices and a stronger role for the European Union Cybersecurity Agency, was backed by Industry Committee MEPs.

The European Union cybersecurity scheme will certify that an information and communications technology product ("**ICT**"), process or service has no known vulnerability at the time of the certification's release and that it complies with international standards and technical specifications.

The Cybersecurity certification framework will be voluntary and where appropriate make the certification mandatory, will specify three risk-based assurance levels and provide a stronger mandate for the European Agency for Network and Information Security ("**ENISA**").

A copy of the draft report can be found here and the accompanying press release can be found here.

(vi) Insurance Europe issues comment on observing GDPR codes of conduct

On 12 July 2018, Insurance Europe published a comment note on the creation of codes of conduct in relation to assisting with compliance under the GDPR (the "**Note**"). The Note highlights the importance of the existence of codes of conduct in preparing and assisting with the GDPR implementation process, however it also raises concern about the length of time it can take for a code of conduct to come into being.

The Note therefore calls for guidance in terms of the conditions which need to be met before a code of conduct can be applied. The Note seeks that any such guidance will make clear that the implementation of a code of conduct does not require the establishment of a monitoring body under Article 41 of the GDPR. The Note outlines the importance of codes of conduct being implemented swiftly and efficiently and not being unnecessarily delayed or defeated.

A copy of the Note can be viewed here.

(vii) FSI Publishes Insight on Innovative technology in financial supervision

On 16 July 2018, the Financial Stability Institute ("**FSI**") published an Insight (Insights are part of a publication series issued by the FSI on policy implementation) on innovative technology in financial supervision (the "**Insight**").

The Insight focuses on the early experiences of supervisory agencies who have begun to use innovative technology as part of their operations and outlines the risks, benefits, challenges and legal issues involved. It further outlines how supervisory agencies can best utilise this innovative technology.

A copy of the Insight can be found here.

(viii) Press Release providing update on cross-border GDPR application

On 20 July 2018, the EDPB issued a press release in which it outlines the current application of GDPR in terms of cooperation between Member States so as to ensure a consistent application of the new procedures (the "**Press Release**").

The Press Release provides that as at present the number of disputes arising out of consistency of application is manageable, however it emphasises the importance of close cooperation between supervisory bodies going forward to ensure efficiency.

A copy of the press release can be viewed here.

(ix) Insurance Europe issues letter to European Commission regarding transfer of personal data requirements post-brexit

On 26 July, 2018 Insurance Europe sent a joint letter, signed together with DigitalEurope, the Trans-Atlantic Business Council and the European Association of Craft, Small and Medium-sized Enterprises, to the European Commission on the issue of the transfer of personal data between the UK, the EU and the EEA post-Brexit.

The letter stresses the importance of legal certainty post-Brexit regarding the transfer of personal data and suggests that the best way to guarantee this legal certainty would be by way of an adequacy decision under Article 45 of GDPR. Article 45 provides that a transfer of personal data to a third country may take place where the European Commission decides that the third country in question ensures an adequate level of protection. The letter urges the European Commission to begin the Article 45 process without delay.

A copy of the letter may be found here.

(x) EDPB issued a statement on the data protection impacts of economic concentration

On 27 August 2018, the EDPB issued a statement on the data protection impacts of economic concentration.

This was noted by the European Commission's intention to analyse the effects of further concentration of 'commercially sensitive data about customers' personal data in the context of its investigation into the proposed acquisition of Shazam by Apple.

This is particularly so within the technology sector, when a significant merger is proposed that increases market concentration in digital markets which has the potential to threaten the data protection and freedom enjoyed by consumers and has longer term implications for the economic protection, data protection and consumer rights.

A copy of the statement can be accessed here.

(xi) EDPB adopts Opinion 11/2018 on the draft list of the competent supervisory authority of Ireland regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35.4 GDPR)

On 25 September 2018, the EDPB adopted '*Opinion 11/2018 on the draft list of the competent supervisory authority of Ireland regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35.4 of GDPR)*' (the "**Opinion**").

The Data Protection Commission (the Irish Supervisory Authority) submitted its draft list to the EDPB on 11 July 2018, with the period of adoption being extended until the 25 September 2018, to take into account the complexity of the subject matter and to consider the draft lists submitted by the twenty-two other competent Supervisory Authorities across the European Union.

In compliance with article 64.1 of GDPR, the EDPB has to issue an opinion where a Supervisory Authority intends to adopt a list of processing operations subject to the requirement for a data protection impact assessment pursuant to article 35.4 of GDPR with the aim of creating a harmonised approach when processing data cross border or that can affect the free flow of personal data or natural persons across the European Union.

GDPR does not impose a single list, however, it does promote consistency, therefore the EDPB seeks to achieve this in its opinions by requesting that Supervisory Authorities include some types of processing in their lists and requesting them to remove some criteria which the EDPB does not consider as necessary creating high risks for data subjects and requesting them to use some criteria in a harmonized manner.

A copy of the Opinion can be accessed here.

(xii) Statute of Limitations (Amendment) Bill 2018

On 26 September 2018, the Statute of Limitations (Amendment) Bill 2018 (the "**Bill**") was initiated and currently before Dáil Éireann, at the First Stage. The Bill was introduced to provide that people who suffered as a result of maternal ingestion of thalidomide are not excluded from pursuing their cases because of time limits in the Statute of Limitations Act 1957.

To view the stage, history and text of the Bill can be accessed here.

(xiii) European Data Protection Board - Third Plenary session

On 25 and 26 September 2018, the EDPB held their third plenary session, during which a number of different topics were discussed:

- The EU-Japan adequacy decision: The EDPB discussed the implications of the EU-Japan draft adequacy decision with a view to providing an opinion on same. The purpose of the EU-Japan draft adequacy decision is for Japan to commit to implementing a level of protection of personal data transferred to Japan that is equivalent to European standards.

- Data Protection Impact Assessment ("**DPIA**") lists: The DPIA is a process in which data protection risks potentially affecting the rights and freedoms of individuals are identified and mitigated. To assist in the DPIA process, the GDPR requires national supervisory authorities to create and publish lists of types of operations that are likely to result in a high risk to data protection. The EDPB reached an agreement on establishing common criteria for the DPIA lists.

- Guidelines on territorial scope: The EDPB adopted new draft guidelines to assist in the provision of a common interpretation of the territorial scope of the GDPR. The Guidelines will also assist in the application of the GDPR generally;

- E-evidence: The EDPB adopted an opinion on the new E-evidence regulation, as proposed by the European Commission.

A copy of the press release can be accessed here.

The International Swaps and Derivatives Association ("**ISDA**")

(i) ISDA comments on European Parliament draft report 'on relationships between the European Union and third countries concerning financial services regulation and supervision

On 6 July 2018, the International Swaps and Derivatives Association ("**ISDA**") published a comment paper in response to the European Parliament's draft report on the relationships between the European Union and third countries concerning financial services regulation and supervision ("**Report**").

The paper emphasises ISDA's belief that the best course of action on this issue is for regulators to adopt a risk based approach when evaluating the compatibility of regulatory regimes in third-countries and in this regard ISDA outlines its broad support for the provisions contained in the Report relating to same. ISDA is however of the view that further guidance should be issued in relation to the practical application of equivalence in the context of derivatives regulation.

The comment paper can be found here and the Report can be found here.

(ii) ISDA publishes response to the European Commission Consultation on Fitness Check on European Union Public Reporting Framework

On 17 July 2018, ISDA responded to the European Commission Consultation on Fitness Check on European Union Public Reporting Framework (the "**Fitness Check**") (the "**Report**"). The purpose of the Fitness Check was to examine whether or not the European Union public reporting framework was of a suitable standard and whether or not any changes could be made to increase its efficiency.

The Report outlines ISDA's view that the primary purpose of the International Financial Reporting Standard ("**IFRS**") is to provide guidance to investors/lenders/creditors in their decision making regarding transactions involving equity and debt instruments (as well as other types of credit). The Report provides the view that the IFRS is not a tool which should be used to guarantee or enhance financial stability. The Report further emphasises the benefits of a single accounting framework.

A copy of the Report can be found here.

(iii) ISDA publishes FAQs to assist with U.S. Resolution Stay Protocol

On 22 August 2018, ISDA issued a set of frequently asked question to enhance understanding of the U.S. Resolution Stay Protocol (the "**Protocol**"). The purpose of the Protocol is to help ensure compliance by market participants with the relevant US regulations. The FAQs published by ISDA are intended to give clarification on some of fundamental aspects of the Protocol and they include the following:

- Who is eligible to comply with the Protocol?
- What is the purpose of the Protocol?
- When does the Protocol apply?
- What is the relationship between the protocol and U.S. regulations?

A copy of the FAQs can be found here and a copy of the Protocol can be found here.

(iv) ISDA comments on Cross-border Progress

On 12 September 2018, ISDA's Chief Executive Officer Scott O'Malia comments on important OTC derivatives issues, which reflects ISDA's long-held commitment to making the market efficient and safer.

Cross-border recognition is fundamental to the functioning of the derivatives market if done incorrectly firms face having to simultaneously comply with multiple sets of duplicative and overlapping rules, which discourages cross-border trade and resulting in market fragmentation which then means a smaller liquidity pool, higher costs, less efficiency and a less resilient market to shocks.

There is a need for a cross-border framework that is based on risk and recognises overseas rules that are broadly comparable in outcomes, without requiring the rules to be exactly the same and that any changes to the current framework should reflect the progress made across the globe to implement clearing, margin, reporting and other requirements in line with Group-of-20 commitments and respecting a national regulators need to take the characteristics of their local markets and existing legal regimes into account.

ISDA has campaigned for changes to the cross-border framework and proposed a risk-based approach for comparability determinations in September 2017.

Unveiling a new approach by the US Commodity Futures Trading Commission ("**CFTC**") the proposed framework, which will be set out in a forthcoming paper distinguishes between those rules meant to mitigate systemic risk and those reforms designed to address trading and market practices with comparability being required for the former but the CFTC would exercise deference for those rules deemed sufficiently similar, based on a flexible and outcomes-based approach.

Activities that are not risk-related, such as trading, business conduct and public reporting could be tailored to reflect local practices and trading conditions and would fall under the oversight of the local regulator.

A copy of the full comments can be accessed here.

(v) ISDA and the US Chamber Center for Capital Markets Competitiveness publish Safe Harbor Recommendation

On 20 September 2018, ISDA and the US Chamber Center for Capital Markets Competitiveness ("**CCMC**") published a new paper that recommends the introduction of a safe harbour mechanism that would avoid the need for firms to comply with two sets of similar but not identical US rules:

- One from the CFTC; and
- One from the Securities and Exchange Commission ("**SEC**").

A copy of the press release and the paper recommending the introduction of a safe harbour mechanism can be accessed here.

(vi) ISDA publish recommendations on Final Stages of UMR implementation

On 26 September 2018, ISDA published a joint comment letter on the implications of the final stages of the implementation of the uncleared margin rules ("**UMR**") (the "**Comment Letter**"). UMR are standards for margin requirements for non-centrally cleared derivatives, which have been set by regulators in accordance with the Basel Committee on Bank Supervision and International Organization of Securities Commissions (BCBS-IOSCO) Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives (Final Framework).

The Comment Letter provides an opinion in relation to the challenges which will arise from the final stages of UMR implementation and outlines recommendations which it is hoped will lessen the negative impact which this may bring upon market participants. The recommendations include the following:

- Recalibration of IM requirements to more appropriately address systemic risk;
- Remove Burdens to Use Globally Approved IM Models, including the ISDA SIMM.

A copy of the Comment Letter may be viewed here and a copy of the press release relating to same can be viewed here.

Brexit

(i) Brexit and the Irish Law ISDA Master Agreement

On 3 July 2018, ISDA published an Irish law and a French law version of the ISDA Master Agreement. Both will act as an alternative option to the English law version of the document for organisations who intend to continue trading under EU law following Brexit. It is worth noting that only those provisions relating to governing law and submission to jurisdiction have been amended in the Irish law version of the ISDA Master Agreement and that Irish courts will often have regard to decisions of the English courts with respect to points of law

The prospect of being able to enter into Irish law governed agreements and to ensure that any proceedings arising out of those agreements will be heard in the Irish courts will no doubt give those entities greater legal certainty as to the impact of Brexit on their derivatives trading whether derivatives form a core part of the investment strategy or are used for hedging and other efficient portfolio management purposes.

A copy of the ISDA press release can be found here with the Irish law ISDA Master Agreement available here.

(ii) ISDA Legal Opinions & Brexit

On 5 July 2018, ISDA published an opinion on the impact of Brexit on contractual arrangements between European Union/European Economic Area - based counterparties and contractual arrangements governed by the law of a European Union/European Economic Area Member State (the "**Opinion**").

The Opinion specifically focuses on the existence of any Member State requirements in local law in respect of the implementation of the Winding up Directive and the Financial Collateral Directive.

The Opinion further highlights the following:

- Once Brexit has completed the Brussels 1 Recast Regulation will no longer apply to the enforcement of judgments of English Court in other member states; and

- The requirement, post Brexit, for agreements governed by English Law to include a provision relating to the recognition of bail under Article 55 of the Bank Recovery and Resolution Directive.

A copy of the Opinion is available here.

(iii) The United Kingdoms's White Paper and BSG's response to it

On 6 July 2018, the United Kingdom published their Chequers statement setting out the United Kingdom government's blue print for their white paper ("**Chequers Statement**") and on 12 July 2018, the government of the United Kingdom published its white paper titled '*the future relationship between the United Kingdom and the European Union*' ("**White Paper**").

The White Paper restates the policy of the United Kingdom's government which is to:

- Leave the single market and customs union;
- Gain flexibility when entering international trade agreements specifically service agreements; and
- End the free movement of people and the jurisdiction of the Court of Justice of the European Union in the United Kingdom.

In relation to the future UK-EU relationship, the White Paper suggests an overarching institutional framework taking the form of an association agreement between the European Union and United Kingdom. More specifically the White Paper sets out that there would be an:

- **Economic partnership**: This would comprise of a free trade area for goods, maintenance of current antitrust prohibitions and merger controls with close cooperation by the European Union with United Kingdom enforcement, a common rule book to state aid, maintaining the Unified Patent Court Agreement on a firm legal basis, and a digital relationship that covers digital trade and e-commerce, telecommunications and digital infrastructure, digital technology, and broadcasting;
- **Security partnership**: Cooperation between law enforcement and criminal justice; including law enforcement and criminal justice co-operation; and
- **Cross-cutting and other co-operation in areas such as data protection.**

On 12 July 2018, the European Parliament's Brexit Steering Group ("**BSG**") welcomed the White Paper and the Chequers Statement as the first step to establishing a new relationship between the United Kingdom and the European Union in its response (the "**Response**").

In the Response, the BSG welcomed the proposal that the EU-UK relationship take the form of an Association Agreement structured in the dimensions of economic, sectoral, security and foreign policy, on a firm footing within a coherent governance structure. However, the BSG reiterated that the signing of a Withdrawal Agreement remains conditional on the agreement on certain aspects of the withdrawal including:

- **The Northern Ireland issue**: Requires a credible "back stop" provision for the Northern Ireland/Ireland border to avoid a hard border whilst safeguarding the integrity of the single market. The BSG insisted on the presence of a "backstop" more recently in a press release published on 27 July 2018; and

- **Credible dispute settlement mechanism**.

The BSG's provided that the closest trade and economic partnership possible is their goal while ensuring amongst other things the four freedoms are not divided, the single market is protected and any agreement with the United Kingdom is not done an a sector-by-sector approach.

The BSG continues to dissect the White Paper with updates expected to be released.

A copy of the White Paper is available here, a copy of the Response is available here and copy of the press release published on 27 July 2018 is available here.

(iv) ESMA urges firms authorised in the United Kingdom and providing services in other Member States to apply for authorisation before it is too late

On 12 July 2018, a public statement titled '*Timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union*' was published by ESMA urging all market participants to submit their authorisation requests in the context of Brexit.

In the event of no deal being made for Brexit with the United Kingdom no transitional period will begin on 30 March 2019 rendering firms authorised in the United Kingdom and providing services in other Member States unable to do so after 29 March 2019. Such firms are encouraged to gain authorisation in one of the 27 Member States remaining in the European Union to protect against this scenario.

In the statement ESMA notes amongst other things that certain NCAs have already reported that they will not guarantee authorisation before 29 March 2019 to firms who submit their authorisation application after June/July 2018.

A copy of ESMA's statement is available here.

(v) Contractual continuity issues of OTC Derivatives considered by AFME and ISDA

On 30 July 2018, the Association for Financial Markets in Europe ("**AFME**") and the International Swaps and Derivatives Association ("**ISDA**") published a paper titled 'Contractual continuity in over-the-counter ("**OTC**") derivatives – challenges with transfers' ("**Paper**").

The Paper sets out the challenges facing both firms in the United Kingdom and the European Union and their clients in relation to the uncertainty of transferring OTC derivative

contracts to a licensed affiliate in one of the twenty-seven Member States of the European Union remaining due to the removal of passporting rights for firms licensed in the United Kingdom to provide services in other Member States and vice versa. The potential challenges reviewed include:

- The transfer of United Kingdom's derivatives business outside of the UK to an affiliate in the European Union-27 using the statutory mechanisms available under UK law, which allow the transfer of existing contracts with third parties without the need for the individual consent of the third parties;

- Execution and timing in a large-scale novation of OTC derivative contracts to an entity in a Member State may cause issues; and

- Solutions that policymakers and regulators could consider to minimise risks and provide certainty to the market by permitting continued maintenance, risk management, performance, termination or disposal of existing contracts post-Brexit.

A copy of the Paper is available here.

(vi) Central Bank issues Press Release on European Supervisory Authorities Brexit Opinion

On 31 July 2018, the Central Bank issued a press release in which it welcomed the publication of the ESA's opinions on Brexit, which focused on the impact of the United Kingdom's exit:

- ESMA's statement reminded regulated entities of the need to make timely submission of requests for authorisation in the context of the United Kingdom's withdrawing from the European Union. ESMA has noted that, as there is no assurance that a transition period will be agreed, entities need to consider the worst-case scenario where a hard Brexit would take place on 30 March 2019;

- The EBA published an opinion relating to the risks posed by lack of preparation of financial institutions for the withdrawal of the United Kingdom from the European Union. Financial institutions must take practical steps now to prepare for the possibility of a withdrawal of the United Kingdom from the European Union with no ratified Withdrawal Agreement in place and no transition period; and

- EIOPA published an opinion on the obligations of insurance undertakings and insurance intermediaries to inform customers about the impact of the withdrawal of the United Kingdom from the European Union.

The Central Bank emphasises the importance of undertakings having the necessary plans in place when it comes to facing Brexit and in this regard it adopts the opinions of ESMA, the EBA and EIOPA. The Central Bank is highlighting the importance of being Brexit-ready by endorsing these opinions.

A copy of the Central Bank's press release can be found here, with the statement from ESMA available here, the EBA's opinion here and EIOPA's opinion accessible here.

(vii) ECB updates Q&A on Relocating to Euro Area

On 2 August 2018, the ECB updated its Q&A which provides guidance for banks seeking to relocate their activities to the European Union. The production of the Q&A forms part of the ECB's function in supervising banks in the EU. The Q&A was updated by insertion of the following questions:

- Would the ECB accept a business model whereby a bank carries out business, including capital market transactions, in the euro area while it continues to use group-wide infrastructure, expertise and arrangements in a third country?
- What are the requirements regarding the staffing of banks?
- Can I continue to provide services to customers in the EU from a branch in London post-Brexit?
- Can I start carrying out banking activities in a euro area country if not all the necessary arrangements are yet in place, but I plan to put them in place in the near future?
- Will the use of a back-to-back booking model be accepted? What arrangements do you expect to be in place when it comes to booking models generally?
- How will booking models be assessed? What are the supervisory expectations vis-à-vis back-to-back booking?
- What are your supervisory expectations when it comes to outsourcing arrangements? Which functions and services would it be possible for a euro area bank to outsource?

A copy of the updated Q&A can be found here.

(viii) Effect of a no-deal Brexit

On 23 August 2018, the United Kingdom government published guidance on the possible effect on the banking, insurance and financial services industries if a no-deal Brexit materialises, meaning that the United Kingdom would leave the European Union without a withdrawal agreement being agreed between the two parties, which would result in a sudden break from the European Union on 29 March 2019, without any transitional period (the "**Guidance**").

The Guidance outlines the government's strategy should a no-deal Brexit occur and attempts to protect United Kingdom undertakings and United Kingdom citizens by outlining steps which can be taken to prepare for such a scenario. The Guidance provides that, should a no-deal Brexit occur, the United Kingdom government intends to, if needs be, act

unilaterally without European Union co-operation to ensure as much continuity and stability as it can in the short term, however will remain open to discussion with the European Union regarding exit strategies and procedures.

A copy of the Guidance can be found here.

(ix) Brexit Statement by Michel Barnier

On 31 August 2018, a statement was published by Michel Barnier, the European Chief Negotiator for Brexit, following his meeting with the UK Secretary of State for Brexit, Dominic Raab. In his speech Mr Barnier outlined what was discussed at the meeting, namely the following:

- Internal security;
- Translating United Kingdom's White Paper into concrete guarantees;
- Reciprocal rights for citizens;
- Foreign Policy;
- External Security; and
- Defence.

A copy of the full statement may be found here.

(x) European Parliament resolution on the state of play of negotiations with the United Kingdom published in the Official Journal of European Union

On 27 September 2018, the European Parliament resolution of 3 October 2017 on the state of play of negotiations with the United Kingdom was published in the Official Journal of the European Union. The resolution contains information on:

- Citizens' rights;
- Ireland and Northern Ireland;
- Financial settlement; and
- Progress of the negotiations.

The state of play of negotiations with the United Kingdom can be accessed here.

Financial Services and Pensions Ombudsman ("**FSPO**")

(i) The Financial Services and Pensions Ombudsman Launches Strategic Plan for 2018 – 2021

On 5 July 2018, the Financial Services and Pensions Ombudsman ("**FSPO**") launched a Strategic Plan, '*Enhancing the Customer Experience*', (the "**Plan**") which sets out the vision for the FSPO over the next three years.

The Plan is the first for the organisation since the amalgamation of the former offices of the Financial Services Ombudsman and the Pensions Ombudsman in January 2018 and is a response since an increase in the number of complaints and a further increase in projected complaints are expected in 2018 and beyond. The Plan is built on three key pillars:

- Delivering for Our Public;
- Innovating for Our Future; and
- Developing Our People and Our Organisation.

The overall objective of the Plan is to ensure that the organisation can deal efficiently with this increase and enhance the experience of customers by delivering services faster and better to improve the quality and speed of complaints handling. To this end, the FSPO will establish a "Customer Operations and Information Management Directorate" with a dedicated focus on improving customers' experience and the time taken to investigate complaints, making better use of information technology and providing new and easier ways to interact with the FSPO.

A copy of the Plan can be found here with the accompanying press release can be found here.

Competition and Consumer Protection Commission ("**CCPC**")

(i) The Competition and Consumer Protection Commission publishes its 2017 Annual Report

On 30 August 2018, the Competition and Consumer Protection Commission ("**CCPC**") published its 2017 Annual Report.

The Annual Report compiles the impact of the CCPC's work on behalf of consumers and businesses in Ireland, which included the first criminal conviction in Ireland for bid rigging; and the first custodial sentence for misleading a consumer in the sale of a car.

The CCPC's was also active in a number of sectors across the economy such as motor vehicle crime, ticketing, motor insurance, nursing homes sector, mortgages, waste collection, PCP car finance and the import of unsafe products.

In the retail sector, the CCPC took enforcement action against a number of traders for breaching consumer protection law with 35 Fixed Payment Notices paid by traders and Compliance Notices issued to 12 traders directing them to comply with consumer law.

Regarding mergers, the CCPC's role is to review the merger process to ensure there is not a substantial lessening of competition in Ireland. During 2017, 72 mergers were notified to the CCPC and 68 determinations were issued in 2017.

A copy of the Annual Report 2017 can be accessed here.

Office of the Director of Corporate Enforcement ("**ODCE**")

(i) ODCE publishes draft paper on transfer pricing in financial transactions

On 3 July 2008, the Office of the Director of Corporate Enforcement ("**ODCE**") published a draft paper on transfer pricing in financial transactions (the "**Paper**"). The purpose of the Paper is to give further guidance on the application of the OCED's transfer pricing guidelines of 2017. The Paper focuses particularly on the following aspects of transfer pricing of financial transactions:

- Treasury functions;
- Intra group loans;
- Cash pooling;
- Hedging;
- Guarantees; and
- Captive Insurance

The Paper invites feedback on the draft by giving a specific set of questions to answer. The deadline for submission for feedback was 7 September 2018 and all feedback shall publically accessible.

A copy of the Paper can be found here.

Companies (Statutory Audits) Act 2018

(i) The Companies Act (Statutory Audits) Act 2018 takes effect

On 25 September 2018, much of the Companies (Statutory Audits) Act 2018 (the "**Act**") came into effect. The Act introduces a new stand-alone Part 27 and makes certain amendments to the Companies Act 2014 (the "**2014 Act**"). The introduction of a new Part 27, which is largely concerned with statutory and audit matters, does not change the structure and numbering of the Companies Act.

The Act makes the following key amendments to the 2014 Act:

- Where a company taking advantage of an audit exemption, is late in filing their annual returns, such a company will lose their entitlement to exemptions for the two financial years following the one to which the late filing relates;

- Companies have 56 days after the annual return date (as opposed to 28 days after its annual return date under the 2014 Act) within which to file their annual return and financial statements; and

- The Irish Auditing and Accounting Supervisory Authority ("**IAASA**") is empowered under this Act to prescribe additional requirements in relation to the content of the statutory auditor's report and to administer sanctions on a statutory auditor.

The Act also introduces a small number of amendments largely concerned with the internal workings of the IAASA. Since the Act only seeks to amend the 2014 Act, the correct citation for the 2014 Act will continue to be simply, the Companies Act 2014.

The Act can be accessed here.

Dillon Eustace
30 September 2018

CONTACT US

Our Offices

Dublin

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

Cayman Islands

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

New York

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

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

E-mail: enquiries@dilloneustace.ie
Website: www.dilloneustace.ie

Contact Points

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

Andrew Bates
E-mail: **andrew.bates@dilloneustace.ie**
Tel : + 353 1 673 1704
Fax: + 353 1 667 0042

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

Enda McGeever
E-mail: enda.mcgeever@dilloneustace.ie
Tel: + 353 1 673 2051
Fax: + 353 1 667 0042

This Investment Firms 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 30 September 2018, 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

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO