Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 April 2015 – 30 June 2015

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INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

European Markets Infrastructure Regulation ("EMIR")

(i) ESMA consults on clearing obligations under EMIR

On 11 May 2015, the European Securities and Markets Authority ("**ESMA**") published its fourth consultation paper (ESMA/2015/807) on the clearing obligation under EMIR (the Regulation on over-the counter ("**OTC**") derivate transactions, central counterparties ("**CCPs**") and trade repositories ("**TRs**").

This consultation paper seeks stakeholders' views on proposed regulatory technical standards ("**RTS**") on the clearing obligation under EMIR.

The aim of the consultation paper is to seek interested parties views on the RTS that ESMA has to draft and submit to the European Commission.

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission. The consultation process closes on 15 July 2015.

The consultation is available via the following link:

http://www.esma.europa.eu/system/files/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf

(ii) ESMA publishes opinion on the composition of CPP colleges

On 21 May 2015, ESMA published a draft opinion (dated 7 May 2015) on the CCP Colleges to clarify which authorities qualify as a college member under Article 18(2)(c) of EMIR following the establishment of the Single Supervisory Mechanism (the "**SSM**") and to resulting voting rights.

Under Article 18(2) of EMIR, a CCP college (that is, a college to facilitate the granting or refusal of authorisation of a CCP) should include, among other authorities, the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three member states with the largest contributions to the CCP's default fund.

Under the SSM Regulation (Regulation 1024/2013), the European Central Bank ("**ECB**") may take over from national competent authorities ("**NCAs**") the direct prudential supervision of certain clearing members that are credit institutions.

The opinion clarifies that where the ECB has taken over the direct prudential supervision of any of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP, it should join the college pursuant to Article 18(2)(c) of EMIR.

The opinion in full is available via the following link:

http://www.esma.europa.eu/system/files/2015-838_esma_opinion_on_the_composition_of_the_colleges.pdf

(iii) ESMA updates list of authorised CCPs under EMIR

On 27 March 2015, ESMA published an update to its list of CCPs that are authorised under EMIR as well as its Public Register for the Clearing Obligation under EMIR ("**Public Register**").

Following this, on 27 April 2015, ESMA recognised ten third country CCPs established in Australia, Hong Kong, Japan and Singapore.

The recognition by ESMA allows third country CCPs to provide clearing services to clearing members or trading venues established in the EU.

Those CCPs are established in jurisdictions which have been assessed as equivalent by the European Commission with regard to their legal and supervisory arrangements for CCPs. Several other steps led to the recognition of those third-country CCPs, including the conclusion of cooperation agreements with the relevant third-country authorities, as well as the consultation of certain European competent authorities and central banks, as foreseen by EMIR.

As a result, ESMA has published a list of the recognised third-country CCPs as well as the classes of financial instruments covered by the recognition of the following CCPs: ASX Clear (Futures) Pty Ltd, ASX Clear Pty Ltd, HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited, SEHK Options Clearing House Limited, Japan Securities Clearing Corporation, Tokyo Financial Exchange Inc, Singapore Exchange Derivatives Clearing Limited and The Central Depository (Pte) Limited.

This list will be updated after each new decision on the recognition of third-country CCPs.

The updated lists of CCPs are available via the following links:

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

https://www.esma.europa.eu/system/files/third-country_ccps_recognised_under_emir.pdf

The updated Public Register can be found via the following link:

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

(iv) ESMA publishes updated EMIR Q&A

On 27 April 2015, ESMA issued the thirteenth update of its *questions and answers* ("**Q&A**") document (ESMA/2015/775) on the implementation of EMIR. The update relates to the second level of the EMIR validation specifications to be commonly applied by TRs to ensure that reporting is performed according to the EMIR regime.

The validation specifications involve verifying that the values reported in the fields comply with the format and content rules set out in the technical standards on reporting. It is expected that upon implementation by the TRs, a failure to comply with the requirements will trigger a rejection of the report by the TR. This is a key step for achieving better data quality as a rejected report will indicate which fields are not reported in compliance with EMIR and need to be corrected, which will allow counterparties to improve their reporting to meet the EMIR standards.

The validation controls that TRs will put in place are based on the original rules specified in the EMIR technical standards which were published in December 2012 and entered into force on 12 February 2014. No additional reporting requirements are introduced.

In order to allow sufficient lead time to implement the second level validation, ESMA expects the TRs to be able to implement the validation by end October 2015.

The Q&A is available via the following link:

http://www.esma.europa.eu/system/files/2015_775_qa_xii_on_emir_implementation_april_2015.pdf

(v) European Commission Services Consultation on EMIR implementation

On 21 May 2015, the European Commission's Financial Stability, Financial Services and Capital Markets Union Directorate General ("**DG FISMA**") published a consultation to enable it to judge market participants' experience in implementing EMIR (the "**Consultation**").

The European Commission is required under Article 85(1) of EMIR to review and prepare a general report on EMIR for submission to the European Parliament and European Council. It is required to do this by 17 August 2015.

EMIR requires the European Commission in particular to assess:

- The need for any measure to facilitate the access of CCPs to central bank liquidity facilities;
- The systemic importance of the transactions of non-financial firms in OTC derivatives, in particular the impact of EMIR on use of derivatives by non-financial firms;
- The functioning of the supervisory framework for CCPs;
- The efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area; and
- The evolution of CCPs' policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

The European Commission also published a speech on 29 May 2015 that was delivered by Jonathan Hill, Commissioner of DG FISMA, at a public hearing in relation to the European Commission's review of EMIR implementation. Points of interest in Lord Hill's speech include:

- Clearing obligations and margin requirements for trades not centrally cleared are still not fully in place. ESMA published its final draft RTS for the central

clearing of interest rate swaps ("**IRS**") under EMIR in October 2014. The European Commission has now finalised its discussions with ESMA and is starting the process of getting the first clearing obligations adopted by the European Commission. It has taken some time to refine the rules in co-operation with ESMA, but it has been crucial to get them right as they form the blueprint for the rules that will follow. The timing means that the first clearing rules for certain interest rate products could be in place as soon as April 2016, although a longer phase-in will be provided for different types of counterparties for whom implementation is less straightforward, including a three year delay for nonfinancial end-users.

- The European Commission will soon put in place the necessary extension of the transitional relief for EU pension funds from central clearing. This will provide a further two years to look at possible solutions to the challenges that pension funds face when clearing. However, the European Commission invites comments as part of the review as to whether that will be sufficient.

- ESMA is expected to deliver draft requirements on margin for non-cleared trades within the next few months. This has taken longer than expected, but an unprecedented degree of consistency in standards globally has been achieved, which should reduce the risks of regulatory arbitrage. The European Commission expects to track the internationally agreed timetable, beginning in late 2016, but with a staggered phase-in for smaller counterparties.

Lord Hill also considers whether the review will result in an "EMIR II". He comments that this is by no means yet certain, adding that the European Commission is not planning a change to EMIR's fundamental objectives. However, if the evidence shows that the rules are not proportionate to the risks posed by different types of institution, or if there are ways to improve EMIR so it better meets the objective of financial stability, Lord Hill believes the European Commission should have the confidence to adapt the existing framework.

A related European Commission press release notes that the review will rely largely on feedback received from the consultation. Responses to the consultation are requested by 13 August 2015. An online questionnaire has been provided for this purpose. The public hearing discussion and responses to the consultation will be taken into account and the European Commission will report back later in 2015 on its findings and the next steps. The European Commission will give areas that are yet to come into force, such as clearing, time to bed down, with a view to looking at how they are working in due course.

The Consultation is available in full via the following link:

http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document_en.pdf

In order to submit responses to the Consultation, the online questionnaire is available via the following link:

https://ec.europa.eu/eusurvey/runner/emir-revision-2015?surveylanguage=en

(vi) ISDA market practice guidance for portfolio compression under EMIR

On 27 May 2015, the International Swaps and Derivatives Association ("**ISDA**") published market practice guidance dated 12 May 2015, on the portfolio compressions obligations under EMIR.

The following documents have been produced by ISDA's portfolio compressions working group to assist participants when implementing systems and procedures to meet their portfolio compressions requirements:

- Step by step overview of the EMIR portfolio compressions requirements; and
- Product feasibility matrix outlining the products that are considered to be compressible.

ISDA explains that both of the above documents are working documents and will evolve as compression tools continue to advance. The ISDA portfolio compressions working group will review the market guidance twice a year to ensure that it remains current and relevant.

ISDA's documents on EMIR are available via the following link:

https://www2.isda.org/emir/

(vii) ESMA update on derivatives reporting under EMIR

On 29 May 2015, ESMA published a press release providing an update on the harmonisation of derivative transaction reporting to TRs under EMIR.

ESMA has reported that since February 2014, when derivatives reporting began in the EU, the six EU TRs registered with and supervised by ESMA under EMIR have

received more than 16 billion submissions, with average weekly submissions over 300 million.

In April 2015, of the 200 million plus new trades that were added:

- 55% were Exchange Traded Derivatives ("**ETDs**") trades;
- 31% were OTC; and
- 14% were listed derivatives traded off exchange.

ESMA has also explained that when TRs started publishing aggregate data after February 2014, the overall aggregation of publicly available data across TRs was problematic due to different data granularity, level of consistency, presentation structure and formats chosen by TRs. ESMA therefore asked for measures to be implemented to improve the quality, harmonisation and access to data aggregates.

From April 2015, harmonised public data has become available from and updated weekly by all TRs. The information available includes: open positions, trade volume and values which are broken down by derivative class, type, trade type (single-sided EEA, single-sided non EEA, or dual-sided). This enables comparison of data across TRs.

The press release in full is available via the following link:

https://www.esma.europa.eu/news/ESMA-fosters-derivatives-market-transparency?t=326&o=home

(viii) ESMA speech on EMIR work

On 9 June 2015, ESMA published a speech given by Ms Verena Ross, ESMA's Executive Director, on ESMA's work relating to EMIR (the Regulation on OTC derivative transactions, CCPs and TRs).

In her speech, Ms Ross explains that ESMA is very much at the implementation stage of its work on EMIR. With initial work on technical standards complete, ESMA is now working to ensure stringent implementation of this legislation. ESMA expects to submit draft technical standards ("**DTS**") to the European Commission after summer 2015, and the revised ESMA standards should become applicable in the second half of 2016. Ms Ross also comments on:

- ESMA's work on the clearing obligation for derivatives under EMIR. It expects the clearing obligation to be implemented in the EU in the coming months; and

- The review of EMIR reporting requirements. Ms Ross explains that beyond clarifying and improving the rules, reporting parties need to comply with those currently in force, such as the rules on assigning a mutually agreed code to the report ("**UTI**"). ESMA has agreed with NCA to increase supervision on this important obligation.

The speech in full is accessible via the following link:

http://www.esma.europa.eu/system/files/2015-921_keynote_speech_at_idx_2015_verena_ross_9_june_2015.pdf#

(ix) ESMA proposes including ETDs in CCP interoperability arrangements under EMIR

On 2 July 2015, ESMA published its final report on '*The extension of the scope of interoperability arrangements'* (the "**Report**") between EU-based CCPs required under EMIR, recommending that the interoperability provisions should be extended to ETDs.

ESMA was required under Article 85(3)(d) of EMIR to submit to the European Commission a Report on the extension of the scope of interoperability arrangements under Title V of EMIR to transactions in classes of financial instruments other than transferable securities and money-market instruments (which constitute the current scope of EMIR).

In the Report, ESMA explains how the concept of interoperability has emerged in the EU and the general regulatory framework applicable to it under Articles 51 onwards of EMIR and in ESMA's guidelines and recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements. It then provides a description of the current interoperability arrangements between EU CCPs for different product types (that is, EU equities, EU government bonds and EU ETDs). Finally, ESMA examines the reasons for extending the current EMIR framework to derivatives and concludes that its scope should be extended to ETDs, but not yet to OTC derivatives.

The Report is available via the following link:

http://www.esma.europa.eu/system/files/2015-1067_-_report_on_io_extension_0.pdf

Markets in Financial Instruments Directive ("MiFID")

(i) Final ESMA guidelines clarifying commodity derivatives definitions under MiFID

On 6 May 2015, ESMA published guidelines on the definitions of commodity derivatives and their classification under C6 and C7 listed in Section C of Annex 1 to the Markets in Financial Instruments Directive (2004/39/EC) ("**MiFID Directive**").

The purpose of the guidelines, which apply to the NCAs, is to provide common, uniform and consistent application of these definitions until the MiFID II Directive (2014/65/EU) comes into force on 3 January 2017. Currently there is no single commonly adopted definition of derivatives in the EU under MiFID, particularly in the case of physically settled commodity forwards. The existing different national applications of the MiFID definitions may result in the inconsistent application of EMIR, which refers to the MiFID commodity derivatives definitions.

The guidelines will clarify the definitions by specifying, in particular, what is meant by "physically settled" and confirming that forwards traded on a regulated market or multilateral trading facility ("**MTF**") fall within the scope of MiFID.

The guidelines will apply from 7 August 2015 and will be superseded by the European Commission's MiFID II delegated acts when they come into effect.

Consequently, ESMA decided not to translate the guidelines into other EU languages due to the short duration of their application. NCAs are required to notify ESMA whether they comply or intend to comply with the guidelines, giving reasons for non-compliance, within two months of the date of publication by ESMA. In the absence of a response by the deadlines, NCAs will be considered non-compliant.

The guidelines in full are accessible via the following link:

http://www.esma.europa.eu/system/files/2015-05-06_final_guidelines_c6_and_7.pdf

(ii) Themed Inspection on Client Categorisation

On 19 June 2015, the Central Bank of Ireland (the "**Central Bank**") published the results of a recent themed inspection of client categorisation which was carried out in a number of MiFID firms (including some passporting into Ireland). The Central Bank also published expectations of actions that it expects to be taken by MiFID firms as a result of the findings.

The thematic review focussed on whether professional clients were correctly categorised as such, given that incorrect client categorisation will lead to clients not being afforded the appropriate levels of investor protection and eligibility to access investor compensation.

The Central Bank also issued a letter to industry, containing its assessment of regulatory standards in the area of client categorisation. The letter outlines that, in order to improve industry's compliance with these requirements, MiFID investment firms must now review their client categorisation policies and procedures and, where necessary, amend these in light of the issues identified in this thematic review.

As a result of the inspection findings, the Central Bank now requires all MiFID firms to:

- take all necessary action required around the categorisation of their clients, in light of the content of the Central Bank's letter and review; and
- any subsequent actions are to be completed by the firm and then discussed and minuted by the board of the firm before 31 December 2015.

The Central Bank's letter and review in full are available via the following links:

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

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Documents/Industry%20Letter%20-%20Client%20Categorisation%20under%20MiFID%2019%20June%202015.pdf

Markets in Financial Instruments Directive ("MiFID II")

(i) Proposed New Rules on FX Contracts under MiFID II

There has been considerable debate as to whether or not FX contracts are financial instruments for the purposes of the MiFID Directive. In light of this, the European Commission is considering adopting a delegated regulation ("**Draft MiFID II FX Regulation**") as a MiFID II Level 2 measure which will clarify this issue.

It is also important to note that if the European Commission does adopt the Draft MiFID II FX Regulation, it will do so under powers conferred by MiFID II. The harmonised definition of an FX spot contract should, therefore, only apply once MiFID II and its associated implementing measures enter into effect from 3 January 2017. This will give those who will be affected some time to comply with any newly applicable legislative requirements.

The Central Bank also stated that its guidance, regarding the FX contracts that are in-scope for EMIR reporting purposes, is likely to remain unchanged *"at least until the European Commission indicates whether and how it might use powers due to be conferred on it under MiFID II"*. Therefore it is possible that the Central Bank could update its guidance on FX contracts after the European Commission indicates the approach that it will take on this issue.

(ii) ESMA consults on draft guidelines specifying criteria for assessment of knowledge and competence under MiFID II Directive

On 23 April 2015, ESMA published a Consultation Paper that sets out proposals that focus on '*appropriate qualification and experience*' and the areas of knowledge and competence of an investment firms personnel that should be assessed when they provide investment advice or information to clients. The Consultation Paper consists of draft guidelines required under Article 25(9) of the MiFID II Directive in order to specify criteria for the assessment of knowledge and competence of an investment firm's personnel that provide investment advice or information about financial instruments, investment services or ancillary services to clients so as to meet the investor protection principles under Article 24 and 25 of the MiFID II Directive.

The Consultation Paper notes that the NCAs of many EU member states already impose knowledge and competence obligations on relevant personnel, however in ESMA's view; MiFID II requires that such personnel have both an "appropriate qualification" as well as "appropriate experience". Once finalised, NCA's of Member

States will each be tasked with publishing a list of 'appropriate qualifications' that they consider meets the requirements of the guidelines or the criteria required to attain an "appropriate qualification" and the "appropriate experience" to be attained by staff giving information to clients. ESMA also suggests what areas the individuals should understand while acknowledging that some Member States already go further than the MiFID II requirements.

The Consultation Paper also includes a list of questions for which ESMA requests public comment. The Consultation period will close on 10 July 2015. ESMA plans to publish a final report in the fourth quarter of 2015, with the final guidelines taking effect from 3 January 2017.

The Consultation Paper in full can be found via the following link:

http://www.esma.europa.eu/system/files/2015-753_cp_mifid_guidelines_on_knowledge_and_competence.pdf

(iii) FMLC responds to ESMA proposals on non-discriminatory access to CCPs and trading venues under MiFID II

On 20 May 2015, the Financial Markets Law Committee ("**FMLC**") published a paper responding to the draft RTS and implementing technical standards ("**ITS**") issued by ESMA relating to non-discriminatory access to CCPs and trading venues under MiFID II.

ESMA published a consultation paper on the implementation of the MiFID II Directive and the Markets in Financial Instruments Regulation ("**MiFIR**") in December 2014 One issue ESMA addressed in its consultation was DTS relating to non-discriminatory access to CCPs and trading venues under MiFIR.

Issues of legal uncertainty that the FMLC raised include:

- The interpretation of "economically equivalent" in the context of non-discriminatory access to CCPs;
- The non-discriminatory netting obligations that apply to CCPs;
- Potential conflicts of the non-discriminatory access to CCPs provisions within EMIR and with the obligations of regulated markets under the MiFID II Directive and MiFIR;

- Specific conditions under which an access request may be denied by a CCP
- The criteria for the approval of access by the relevant competent authorities.

FMLC's response to ESMA's Consultation Paper is available via the following link:

http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc_paper_responding_to_esma_consultation_paper_on_mifid_ii_and_mifir.pdf

(iv) Minutes of FCA MiFID II implementation roundtable: June 2015

On 29 June 2015, the Financial Conduct Authority ("**FCA**") published the minutes of its MiFID II implementation roundtable, which was held on 8 June 2015. Items of interest reported in the minutes include:

- **Update on MiFID II implementing measures.** The European Commission is working towards adopting the MiFID II delegated acts. This is likely to happen in July or September 2015. If the Council of the EU and the European Parliament do not oppose them, the European Commission hopes they will be published in the Official Journal of the EU (the "**OJ**") in early 2016. ESMA intends to publish and send the majority of the draft MiFID II technical standards to the Commission in late September 2015. Again, if the Council and Parliament do not oppose them, the European Commission hopes they will be published in the OJ in the first part of 2016.

- **FCA MiFID II implementation work.** This is being run by a programme board chaired by David Lawton, FCA Director of Markets Policy and International. There are five work streams: authorisations and supervision; transaction reporting; position reporting; transparency calculations, and policy.

- **Areas on which firms are particularly keen to have clarity.** These include transaction reporting, understanding where information on which instruments are traded on venues will come from and the overlap between MiFID and the retail distribution review ("**RDR**"). Trade association representatives attending the roundtable agreed to ask their members for their top five MiFID II implementation concerns so that these can be fed back at the next roundtable.

- **FCA MiFID II external communications strategy.** This will be a key component of the FCA's MiFID II implementation work. How the FCA can best communicate with firms was discussed and suggestions made as to the kind of methods for this. Among other things, attendees expressed support for

frequently asked questions ("**FAQs**") on key topics, dedicated webpages, newsletter updates and interactive sessions.

It was agreed that MiFID II implementation roundtables should be held every month, with additional targeted sessions on specific issues, once the level of detail becomes clearer in the MiFID II technical standards. The FCA intends to hold a MiFID II conference in October 2015, which is likely to cover mostly markets-related and wholesale conduct matters.

The minutes can be found in full via the following link:

http://www.fca.org.uk/your-fca/documents/mifid-ii-implementation-roundtable-minutes-8-june-2015

(v) ESMA speech on EMIR and MiFID II work

On 9 June 2015, ESMA published a speech given by Ms Verena Ross, ESMA's Executive Director, on ESMA's work relating to EMIR (the Regulation on over the OTC derivative transactions, CCPs and TRs) and MiFID II and MiFIR.

Ms Ross explains that ESMA is still at the rule-making stage. She also comments on:

- The transparency regime for derivatives under MiFID II. Ms Ross highlights ESMA's four main focus points while finalising its RTS in this area and explains that feedback from ESMA's consultations has triggered "significant changes" to the draft RTS;
- Position limits for commodity derivatives under MiFID II, which is recognised as one of the most controversial areas of MiFID II; and
- The trading obligation for derivatives under MiFID II, and the "problematic" timetable envisaged in MiFIR.

At the end of her speech, Ms Ross comments on international derivatives convergence.

The speech in full is accessible via the following link:

http://www.esma.europa.eu/system/files/2015-921_keynote_speech_at_idx_2015_verena_ross_9_june_2015.pdf

CRD IV

(i) EBA issues Recommendation on equivalence of non-EU authorities for participating in supervisory colleges

On 1 April 2015, the European Banking Authority ("**EBA**") published a recommendation setting out its opinion on the confidentiality regime of several non-EU supervisory authorities to facilitate their participation in supervisory colleges overseeing international banks, led by EU supervisors. The EBA provides an indication of the equivalence of the confidentiality regime of certain non-EU countries to the EU confidentiality regime.

The non-EU authorities were reviewed on the basis of the notion of confidential information, professional secrecy requirements, and restrictions on the use and disclosure of confidential information. The authorities came from the following countries:

- Bosnia;
- Herzegovina;
- Brazil;
- Canada;
- China;
- FYR Macedonia;
- Mexico;
- Montenegro;
- Serbia;
- Singapore;
- Switzerland;
- Turkey; and
- United States.

The EBA looked specifically at ensuring that each non-EU authority is subject to a confidentiality regime equivalent to the one provided in the EU by the CRD IV Directive. The equivalence of confidentiality regime of the country's supervisory authorities is key to ensure the safe and secure flow of information within that college. Although the final decision on college membership is for each supervisor promoting convergence amongst EU authorities, it is designed to eliminate inconsistencies in approaches which could ultimately hamper the efficient and timely operation of the colleges of supervisors in the EU.

The EBA expects all competent authorities to which the recommendation is addressed to comply with it and to incorporate it into their supervisory practices as appropriate. The deadline for competent authorities to notify the EBA as to whether they comply or intend to comply with the recommendation was 2 June 2015.

The EBA notes that the recommendation is not providing any form of guidance on the appropriateness of the participation in colleges as referred to in Article 116(6) of the CRD IV Directive as this issue remains to be determined by the college of supervisors alone, taking into account the overall structure of the supervised group and the legislation applicable.

The recommendation is available in full via the following link:

https://www.eba.europa.eu/documents/10180/1032035/EBA-REC-2015-01+Recommendations+on+the+equivalence+of+confidentiality+regimes.pdf

(ii) EBA Updates Single Rulebook Q&As

The Q&A contains answers to various questions posed by stakeholders on the practical implementation of the single rulebook (the "**Rulebook**"). The Q&A allows users to search the database for guidelines relating to particular aspects of the Rulebook. Users of the Q&A can search the database by Q&A ID, legal reference, date submitted or keyword.

The EBA updated the Q&A five times during this quarter ending 30 June 2015 as follows:

On 17 April 2015, the EBA updated the question below;

Question ID: 2015_1777: Solvency in the context of Article 32(4)(d)

On 24 April 2015, the EBA updated the question below;

Question ID: 2014_1502: Disclosure on the basis of consolidated situation of EU parents financial holding company.

On 30 April 2015, the EBA updated the questions below;

Question ID: 2015_1848: implementation of the provisions on the shorter transitional period for a countercyclical capital buffer, as provided under Article 160 of the CRD IV Directive.
Question ID: 2015_1846: subordinated loans as additional Tier 1 capital.
Question ID: 2015_1764: Treatment of Sovereign Wealth Funds as non-financial

customers or financial customers
Question ID: 2014_1089: deposits received as collateral.
Question ID: 2015_1968: exposure to third country institutions and investment firms.

On 8 May 2015, the EBA updated the questions below;

Question ID: 2015_1826: client money.
Question ID: 2014_1242: inclusion of interim profits in CET1.
Question ID: 2015_1827: definition of "micro, small and medium sized enterprises".
Question ID: 2014_1002: statement of profit or loss.
Question ID: 2014_1031: forborne exposures, template 19, column 110.
Question ID: 2014_1256: report information on the 20 largest exposures to clients or groups of connected clients.
Question ID: 2014_1351: 10 largest exposures to institutions and unregulated financial sector entities.

On 22 May 2015, the EBA updated the questions below;

Question ID: 2015_1893: Treatment of specific liabilities: even deduction.
Question ID; 2015_1940: FINREP: reporting of negative interest.

(iii) EBA consults on revised data template for the identification of G-SIIs

On 29 April 2015, the EBA published a Consultation Paper to update its data template for the identification of global systemically important institutions ("**G-SIIs**") (the "**Template**").

The need for the revision of the Template was raised by the Basel Committee on Banking Supervision ("**BCBS**") in January 2015. As a result of this, the EBA proposes to amend the RTS on the identification methodology for G-SIIs and ITS on the uniform format and date of disclosure by G-SIIs, which contained a data template. The consultation period closed on 20 May 2015.

The EBA will submit the draft RTS and ITS to the European Commission for endorsement, following which the RTS will be subject to scrutiny by the European Parliament and the Council of the EU. They will then be published in the OJ.

The guidelines will also be translated into the official EU languages and published on the EBA website. The deadline for NCAs to report whether they comply with the guidelines will be two months after the translations have been published.

(iv) EBA speech considers SREP framework and related EBA guidelines

On 6 May 2015, the EBA published a speech delivered on 4 May 2015 by Piers Haben, EBA Director of Oversight, on the common European Supervisory Review and Evaluation Process ("**SREP**") and related guidelines.

The SREP is referred to in Article 97 (and the subsequent provisions) of the CRD IV Directive and the EBA published its final guidelines for common procedures and methodologies for the SREP. The SREP guidelines will apply from 1 January 2016.

In his speech, Mr Haben addresses a number of key issues in relation to the SREP guidelines that were identified by the banking sector during the consultation process such as:

- Proportionality and the balance between consistency and flexibility;
- Use of scoring;
- A common approach to the determination and articulation of additional capital requirements; and
- The risk that the Internal Capital Adequacy Assessment Process ("**ICAAP**") and dialogue with institutions is being "sidelined".

Mr Haben also raises some of the elements in the guidelines that are relatively new to many supervisors. These include business model analysis, the multiple use of stress testing and supervisory outcomes.

The EBA is paying significant attention to the area of supervisory convergence. The SREP guidelines set out an "ambitious" solution and the EBA is "not simply looking for the lowest common denominator". Mr Haben makes clear that all supervisory authorities must make adjustments to their past approaches, while leaving ample scope for proportionality, supervisory judgement and working with banks' own and varied risk management frameworks.

The speech is available in full via the following link:

http://www.eba.europa.eu/documents/10180/1063068/Keynote+speech,%20Piers+Haben+-+4+May+2015.pdf

(v) EBA publishes revised XBRL taxonomy (v2.3.1) for remittance of supervisory reporting under CRR

On 8 May 2015, the EBA published a press release announcing that it has published an update to the XBRL taxonomy that NCAs shall use for the remittance of data under the ITS on supervisory reporting under the Capital Requirements Regulation ("**CRR**").

The revised taxonomy will be used for reports on funding plans and supervisory benchmarking regarding reference dates of 31 December 2014 onwards. The updated taxonomy incorporates corrections to the funding plans and supervisory benchmarking reporting structures. It also specifies how separate variants of the reports shall be used for the remittance of individual and consolidated data.

The EBA has published the following documents:

- A set of XML files forming the XBRL taxonomy;
- A description of the architecture of the XBRL taxonomy;
- The Data Point Model ("**DPM**"), of which the taxonomy is a standardised technical; implementation, including both a database and document representations; along with a description of the formal modelling approach on which the DPM is based, and;
- Additional guidance for the common reporting ("**COREP**") of own fund modules.

The documents are available on the EBA's webpage via the following link:

https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/implementing-technical-standard-on-supervisory-reporting-data-point-model-

(vi) EBA Questionnaire on regulatory equivalence of third countries with CRV IV requirements

On 2 June 2015, the EBA published a questionnaire on the assessment of third countries' equivalence with the regulatory and supervisory framework under the CRD IV Directive and the CRR. The aim of the equivalence assessment process is to assess whether third countries and territories apply regulatory and supervisory arrangements that are equivalent to the applicable EU regulatory and supervisory framework. Ultimately, for those third countries that are recognised as equivalent, EU banks can apply preferential risk weights to relevant exposures to entities located in those countries.

The questionnaire, which will be sent to a selected number of countries in different rounds, will facilitate the collection of data and allow the EBA to provide technical advice on the supervisory regimes of these non-EU countries, as mandated by the European Commission. The questions included in the questionnaire are divided into thematic sections presented within two separate parts:

- Part I - Prudential supervision; and
- Part II - Prudential regulatory requirements.

The questions are accompanied by legislative references to the appropriate CRD IV Directive or CRR provisions, and in most cases, also with a brief explanation of the EU rules in a specific area to help with interpretation. The brief explanations do not contain assessment criteria, and jurisdictions are not assessed against the explanations, examples and definitions that they contain.

As the assessment is aimed at evaluating national regulations, the questionnaire states that the addressed NCAs should communicate with other relevant authorities within its jurisdiction and if necessary involve them in the evaluation, to achieve a consistent review of the national regulatory framework. The EBA states, in a disclaimer, that the publication of the questionnaire allows third countries to prepare themselves for the assessment of their jurisdiction's equivalence with the prudential supervision and regulatory requirements specified in the CRD IV Directive and the CRR. The questionnaire covers all areas relevant for the assessment, but changes may be made in the future. The basis for the actual assessment will only be the version of the questionnaire that is sent to the selected country at the point in time when the country is included in a formal assessment.

Alongside the questionnaire, the EBA has published an Annex II which quotes for the majority of references to articles in the CRD IV Directive and the CRR the corresponding paragraphs of the relevant Basel II or Basel III framework. However, the EBA stresses that its mandate from the European Commission is to assess equivalence only against the CRD IV Directive and the CRR.

The questionnaire is available in full via the following link:

http://www.eba.europa.eu/documents/10180/1094990/Annex+I+-+EBA+questionnaire+on+regulatory+equivalence_publication.pdf

(vii) BBA responds to EBA consultation on CRD IV remuneration requirements

On 4 June 2015, the British Bankers' Association ("**BBA**") published a response to the EBA's consultation on remuneration guidelines.

The EBA published its consultation paper on draft guidelines on sound remuneration policies under Article 74(3) and 75(2) of the CRD IV Directive and disclosures under Article 450 of the CRR in March 2015.

The BBA comments that it is broadly supportive of the EBA's revision of the guidelines to establish a consistent approach to the implementation of the CRD IV requirements. However, its members have a number of concerns, including concern about the removal of the proportionality principle, which ensures that the CRV IV requirements are applied in a way that reflects the bank's/investment firm's nature, size and complexity. The BBA believes that this is likely to have a significant impact on smaller firms. It suggests that the EBA should re-think the implementation of CRD IV, to ensure that smaller less complex banks/investment firms do not become collateral damage in the wider debate about the role of bonuses.

Another issue addressed by the BBA relates to the EBA's definition of longer-term investment plans ("**LTIPs**"). The BBA explains that under the EBA's current proposals the point of vesting of shares under the plan is also the point at which the ratio of fixed to variable remuneration is struck. Under CRD IV this ratio cannot exceed 1:1, or 2:1 with special shareholder approval. The BBA believes that this will make the use of performance incentivising LTIPs unattractive and may result in increases in fixed pay as an alternative. It argues that valuation of such awards at face value upon granting, assuming maximum vesting, would be a preferable approach to valuation and continue to make LTIPs a valuable performance incentivising tool for challenger banks.

The response in full is available via the following link:

https://www.bba.org.uk/wp-content/uploads/2015/06/BBA_response_to_EBA_remuneration_guidelines_consultation.pdf

(viii) Commission Delegated Regulation (EU) 2015/585 enters into Force

On 5 May 2015, the Commission Delegated Regulation ((EU) 2015/585 entered into force after having been published in the OJ from 15 April 2015. Article 304(3) and (4) of CRR mandates the EBA to draft RTS specifying the minimum margin periods of risk ("**MPOR**") that financial institutions acting as clearing members may use as input for the calculation

of their capital requirements for exposures to clients.

The MPOR may be used in both the internal and standardised approaches and the Regulation specifies MPOR in a different manner for different classes of derivatives accordingly. The MPOR floor to be used for the purposes of Article 304(3) is equal to five business days. The Regulation is available via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_098_R_0001&from=EN

(ix) ECEC Decision (EU) 2015/656 published in the Official Journal of the EU ("OJ")

On 25 April 2015, the ECB Decision (EU) 2015/656 was published in the OJ. The decision sets out the conditions under which credit institutions are permitted to include interim or year-end profits in Common Equity Tier 1 capital in accordance with Article 26(2) of CRR. This Decision applies to credit institutions for which the ECB carries out direct supervision in accordance with Regulation (EU) No 468/2014 of the ECB (ECB/2014/17). The Regulation in full is available via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_107_R_0010&from=EN

(x) Update on the First Report on the Monitoring of Additional Tier 1 ("AT1") Capital Instruments issued by EU Institutions

On 4 May 2015, the EBA published an update of its first report on the monitoring of Additional Tier 1 ("**AT1**") capital instruments issued by EU institutions and released on 7 October 2014.

The update was partly based on the review of new AT1 issuances and included some final conclusions of the EBA on issues previously flagged as being under investigation.

The report was finalised during a public hearing on the 18 May 2015. Following this, a second update was published on 29 May 2015 based on the review of new AT1 issuances and includes some final conclusions of the EBA on issues previously flagged as being under investigation. This report (published as a draft report) clarifies the EBA's position on acceptable triggers for regulatory calls and on the conditions for the inclusion of tax gross-up provisions in the terms and conditions of AT1 instruments.

The report can be accessed via the following link:

https://www.eba.europa.eu/documents/10180/950548/EBA+Report+on+the+Additional+Tier+1+instruments+-+May+2015.pdf

(xi) EBA Launches Consultation on RTS on Specialised Lending Exposures

On 11 May 2015, the EBA launched a consultation on RTS on specialised lending exposures. The proposed RTS aim to specify how institutions should take into account several factors when assigning risk weights to specialised lending exposures and how they should treat these factors.

The proposed RTS define four classes of specialised lending:

- project finance;
- real estate;
- object finance; and
- commodities finance.

For each of these four classes, the draft RTS specify a list of factors that institutions shall take into account and propose two options on how these factors should be combined in order to determine the risk weight assigned to the specialised lending exposure. The consultation runs until 11 August 2015.

The consultation paper in full is available via the following link:

http://www.eba.europa.eu/documents/10180/1068081/EBA-CP-2015-09+CP+on+Assigning+RWs+to+Specialised+Lending+Exposures.pdf

(xii) EBA published an updated version of the CEBS guidelines on technical aspects of the management of interest rate risk

On 22 May 2015, the EBA published an updated version of the Committee of European Banking Supervisors ("**CEBS**") guidelines on technical aspects of the management of interest rate risk arising from non-trading activities under the supervisory review process, published on 3 October 2006.

The guidance provided in the updated guidelines applies to the interest rate risk arising from non-trading activities ("**IRRBB**"), one of the Pillar 2 risks specified in CRD IV. The document introduces changes to the high-level 'Principles' laid down in the CEBS Guidelines in order to clarify expectations towards institutions, extend the scope to internal governance, and specify the calculation of the supervisory 'standard shock' that

should be performed in accordance with Article 98(5) of CRD IV.

The Guidelines are structured into two major sections. The first section is an updated version of the original CEBS text and provides enhanced high-level guidance on the management of IRRBB. The second section provides additional details for the management of IRRBB, namely some key technical aspects that should be considered, and specifies the high level guidance.

The Guidelines are addressed to Competent Authorities and will apply from 1 January 2016. Following the publication of the English version, the EBA will make available, in due course, the translations of the Guidelines in all EU languages. Within two months from the publication of the translated Guidelines, Competent Authorities shall confirm to the EBA their compliance status, which will be disclosed on the EBA website.

The final report is available via the following link:

https://www.eba.europa.eu/documents/10180/1084098/EBA-GL-2015-08+GL+on+the+management+of+interest+rate+risk+.pdf

(xiii) European Commission adopts implementing act to extend transitional period for capital requirements for banks' central counterparty exposures under CRR

On 4 June 2015, the European Commission adopted an implementing act to extend the transitional period for capital requirements for banks' CCP exposures under CRR from 15 June 2015 to 15 December 2015. The transitional period was set to expire on 15 June 2015, however, since the authorisation and recognition processes for existing CCPs serving EU markets will not be fully completed by that date, the transitional phase has been extended to 15 December 2015. The extension is also applicable to third country CCPs seeking recognition in the EU.

The provisional text of the European Commission's Implementing Regulation is available via the following link:

http://ec.europa.eu/finance/bank/docs/regcapital/acts/implementing/150604-implementing-regulation_en.pdf

(xiv) AIMA responds to the EBA's consultation paper on guidelines on sound remuneration practices under CRD4

On 4 June 2015, the Alternative Investment Management Association ("**AIMA**") responded to the EBA's consultation paper on guidelines on sound remuneration practices under CRD4 (the "**Guidelines**"). AIMA outlines several concerns in respect of the Guidelines in its response, as follows:

- Proportionality: AIMA outlines that the EBA's interpretation of the proportionality principle could have serious negative implications for AIMA members and that it should allow firms to neutralise certain provisions of the remuneration principles where proportionate to do so;

- Scope: In respect of the EBA's proposal to apply the Guidelines to staff of delegate entities of a CRD4 group company, AIMA outlines that CRD4 does not mention any requirements applying to staff outside the group; and

- Unintended Tax and Regulatory Impacts: AIMA discusses the possible tax consequences of the Guidelines on limited liability partnerships or limited partnerships if dividends paid to a CRD4 group company's shareholders or profit allocations to partners or members of partnerships are considered remuneration where those individuals are otherwise "identified staff" as well. In AIMA's opinion these payments are not remuneration but it envisages disproportionate tax consequences if they are treated as such.

AIMA's response can be accessed via the following link:

http://www.aima.org/objects_store/eba_guidelines_on_sound_remuneration_policies_under_crd_iv_-_response_to_consultation.pdf

The Bank Recovery and Resolution Directive 2014/59/EU ("BRRD")

(i) EBA final guidelines on qualitative and quantitative recovery plan indicators under BRRD

On 6 May 2015, the EBA published a final report (EBA-GL-2015-02) containing guidelines on the minimum list of qualitative and quantitative indicators under Article 9(2) of BRRD for the purposes of recovery planning.

The guidelines, which are addressed to competent authorities, outline the requirements that should be followed by credit institutions and investment firms across the European Union when their recovery plans are being developed.

The minimum list that institutions should include in their plans comprises of indicators grouped into different categories such as capital, liquidity, profitability and asset quality. Depending on the characteristics of specific institutions, macroeconomic and market-based indicators are also included. These indicators will serve to identify the points at which appropriate recovery measures should be considered.

It is important to note that the guidelines merely provide a minimum list of indicators and institutions should not limit their set of indictors to this list. This is recognised within the

guidelines through the provision of a non-exhaustive list of recovery plan indicators, for illustration purposes only.

Competent authorities must assess recovery plans and their recovery indicators by ensuring that institutions put in place appropriate arrangements for the regular monitoring of the indicators.

These Guidelines will enter into force on 31 July 2015. Following the publication of the English version, the EBA will make available, in due course, the translations of the Guidelines in all EU languages. Within two months from the publication of the translated Guidelines, competent authorities shall confirm to the EBA their compliance status, which will be disclosed on the EBA website.

The final report is available via the following link:

http://www.eba.europa.eu/documents/10180/1064487/EBA-GL-2015-02+GL+on+recovery+plan+indicators.pdf/4bf18728-e836-408f-a583-b22ebaf59181

(ii) EBA final report on guidelines on triggers for use of early intervention measures under BRRD

On 8 May 2015, the EBA published its final report (EBA/GL/2015/03) on the guidelines on triggers for the use of early intervention measures under Article 27(4) of BRRD.

The aim of the guidelines, which are addressed to NCAs, is to promote convergence of supervisory practices relating to the application of early intervention measures set out in Article 27(1) of the BRRD. The guidelines establish a link between the on-going supervision conducted by NCAs according to the CRD IV Directive and the early intervention powers set out in the BRRD.

The guidelines clarify the circumstances under which NCAs should consider the application of early intervention measures to firms. Specifically, they identify a set of triggers that are closely linked to the outcomes of the common European Union SREP conducted by NCAs, and elaborate on the circumstances prompting the consideration of whether to apply early intervention measures. The guidelines also recognise that early intervention measures can be triggered on the basis of other circumstances that might not immediately be factored into the outcomes of the SREP assessment, such as significant events or material deterioration or anomalies in the key indicators monitored by NCAs as part of the SREP.

The guidelines do not establish any quantitative thresholds for indicators that could be perceived as new levels for capital or liquidity regulatory requirements. The triggers provided in the guidelines do not oblige NCAs to automatically apply early intervention measures in all cases. In addition, they do not prevent NCAs from applying early intervention measures where such triggers are not met, but NCAs see a clear need for early intervention.

The guidelines will apply from 1 January 2016. In due course, the EBA will make available translations of the guidelines in all EU languages. Within two months of publication of the translated guidelines, NCAs are required to confirm to the EBA their compliance status, which will be disclosed on the EBA website. The EBA consulted on a draft version of the guidelines in September 2014. Its feedback, together with a summary of responses received, is set out in section 4.3 of the final report.

The EBA advises that changes to the draft guidelines have been incorporated in the final version as a result of the responses received. Competent authorities are expected to apply these Guidelines from 1 January 2016, following the implementation of the EBA Guidelines on common procedures and methodologies for SREP.

Implementation of these Guidelines and triggers described in the Guidelines do not prevent competent authorities from applying early intervention measures where such triggers are not met, but competent authorities see a clear need for early intervention.

The final report is available via the following link:

http://www.eba.europa.eu/documents/10180/1067473/EBA-GL-2015-03+Guidelines+on+Early+Intervention+Triggers.pdf

ESMA

(i) ESMA launches centralised data projects relating to MiFIR, MAR and EMIR

On 1 April 2015, ESMA issued a press release stating that it has launched two new major projects at the request of a number of NCAs who have delegated the following tasks to ESMA:

- To provide a central facility in relation to instrument and trading data and the calculation of the MiFIR transparency and liquidity thresholds – Instrument Reference Data Project; and

- To provide a single access point to TRs data under EMIR – the Trade Repositories Project.

The Instrument Reference Data Project will collect data directly from approximately 300 trading venues across the EU which will send their MiFIR/ Market Abuse Regulation ("**MAR**") data to ESMA which will then perform and publish the necessary transparency and liquidity threshold calculations. Once finalised the data base will allow NCAs, and financial market participants, access to all data for financial instruments admitted to trading on EU regulated

markets or traded on MiFID venues.

The Trade Repositories Project will provide ESMA and 27 NCAs with immediate access, through a single platform, to the 300 million weekly reports on derivatives contracts received from 5,000 different counterparties across the EU.

In addition, NCAs have also delegated some tasks related to data collection requirements under MiFIR and the Market Abuse Directive ("**MAD**") to ESMA, as well as the creation of a central access point for regulators to data of the EU's six trade repositories. Both projects will allow ESMA to collect data directly from market infrastructures (trading venues or trade repositories) in a more efficient and harmonised manner and make them available to NCAs and to the public through a centralised system as well as representing a clear EU cooperative solution producing central systems in support of a single market and are expected to produce important harmonisation benefits and real cost savings.

The Instrument Reference Data Project is expected to go live in early 2017 and the Trade Repositories Project will go live in 2016.

(ii) EBA first annual report on convergence of supervisory practices

On 9 April 2015, the EBA published its first annual Report addressed to the European Parliament and Council of the EU on the convergence of supervisory review practices in the EU banking sector.

The Report covers the findings of an assessment carried out over the past three years which focuses on the assessment of risks, supervisory stress testing, on-going review of internal models, and supervisory measures and powers.

The Report identifies that supervisory authorities across the EU have made significant progress towards improving the convergence of their supervisory practices since 2011. The EBA also noted that differences still remain however in methodologies, practices and supervisory measures.

The Annual Report is available in full via the following link:

https://www.eba.europa.eu/documents/10180/950548/Supervisory+convergence+report.pdf

(iii) ESMA call for evidence on investments using virtual currency or distributed ledger technology

On 22 April 2015, ESMA published a paper on investments using virtual currency or Distributed Ledger Technology calling for responses from all stakeholders who can provide information on the following matters:

- Virtual Currency Investment Products, i.e. collective investment schemes ("**CIS**") or derivatives such as options and Contracts for Difference ("**CFDs**") that have virtual currencies as an underlying or invest in virtual currencies related business and infrastructure;

- Virtual Currency Based Assets/Securities and Asset Transfers, i.e. financial assets such as shares, funds, etc. that are exclusively traded using virtual currency distributive ledgers (also known as block chains);

- The application of the distributed ledger technology to securities/investments, whether inside or outside a virtual currency environment.

ESMA has been monitoring and analysing virtual currency investment over the last six months in order to understand developments in the market, potential benefits or risks for investors, market integrity or financial stability, and to support the functioning of the EU single market. ESMA is aiming to share its analysis in order to promote a wider understanding of innovative market developments.

All contributions should be submitted online at www.esma.europa.eu under the heading 'your input – Consultations'. ESMA will consider all responses received by 21 July 2015.

The report in full is accessible via the following link:

http://www.esma.europa.eu/system/files/2015-532_call_for_evidence_on_virtual_currency_investment.pdf

(iv) Letter from the European Commission – Early legal review of ESMA's draft technical standards

On 11 May 2015, ESMA published a letter written by the Director General for the Internal Market and Services of the European Commission, Mr Jonathan Faull, in relation to the early legal review of ESMA's DTS. The purpose of the letter was to announce the preliminary agreement reached by services of the European Commission and of ESMA on conducting an early review of DTS.

Mr Faull expressed that "the early review in respect to the legality and legislative consistency of DTS carried out by the European Commission would apply to those DTS under Central Securities Depositories Regulation ("**CSDR**"), UCITS V Directive, Transparency Directive, MAR and MiFID/MiFIR".

He states that the joint objective in respect to this exercise is to "*ensure legally sound final draft technical standards with a concurrent time-saving*". The new legal review process enables the European Commission to flag any concerns to ESMA from a legal perspective related to DTS, before their adoption by the Board of Supervisors, while also reducing the

risk of any potential lengthy re-approval process that could be triggered by such concerns. Mr Faull stated that he hopes these changes will make the endorsement process more efficient.

He notes that "*the early legal review is without prejudice to the independence of the decision-making progress at the European Commission and at ESMA. ESMA's Board of Supervisors will remain fully independent when adopting the draft technical standards, as provided for in the ESMA Regulation and respective sectoral legislation. At the same time, the College of Commissioners will retain its discretion regarding the endorsement of the draft technical standards adopted and submitted by ESMA, as framed under the ESMA Regulation*".

Mr Faull ensures that the early legal review does not affect in any way the powers entrusted to the European Parliament and the Council towards delegated acts under the Treaty.

Mr Faull stated that ESMA is also expected to deliver all final DTS within the legal deadlines however noted that the early legal review will constitute an additional step in the process and in some cases may result in a lengthening time period necessary before ESMA can finalise and adopt the DTS. He noted in particular with regard to a number of technical standards under MAR and MiFID/MiFIR, which will possibly lead to the delayed submission of the final DTS to the end of September 2015 as opposed to July 2015.

(v) ESMA Consultation on best practice principles for voting research 2014

On 8 June 2015, ESMA published a call for evidence on the impact of the Best Practice Principles for Shareholder Voting Research 2014 ("**BPP**") published by the Best Practice Principles Group in March 2014.

In its February 2013 report on the role of the proxy advisory industry, ESMA recommended that the industry should develop its own EU code of conduct and committed to review the development of any such code. ESMA's review will examine both how many proxy advisers have signed up to the BPP and the depth of changes brought about by the BPP since they were introduced. The depth of changes will be assessed by reference to:

- how far the BPP address the issues identified by ESMA as needing change;
- the extent to which compliance statements published by signatories to the BPP comply with ESMA's report; and
- the actual practice of signatories following implementation of the BPP.

In relation to the actual practice of signatories to the BPP, the call for evidence seeks to gather information on how stakeholders perceive the most recent proxy seasons to have evolved in light of the BPP. It sets out a number of questions relevant to all stakeholders,

with ensuing sections containing questions for specific groups of shareholders, including questions for issuers on the impact and effectiveness of the BPP so far. Questions for issuers include:

- whether the BPP have improved proxy advisors' procedures for managing and disclosing conflicts of interest;
- whether they have enhanced clarity as regards proxy advisors' methodologies and the nature of their information sources; and
- have they enhanced proxy advisors' awareness of the local market, legal and regulatory conditions to which companies are subject.

ESMA has requested that responses to the call for evidence be issued by 27 July 2015. All contributions should be submitted online under the heading '*Your input - Consultations'*. This can be done via the following link:

http://www.esma.europa.eu/consultation/Call-evidence-Impact-Best-Practice-Principles-Providers-Shareholder-Voting-Research-and

(vi) ESMA publishes Risk Dashboard NO.2, 2015

On 5 June 2015, ESMA published its Risk Dashboard No.2, 2015 (the "**Risk Dashboard**")

ESMA's comments, outlined in the Risk Dashboard, include the following in respect of quarter 1 2015:

- EU systemic stress remained around the levels of the end of the previous quarter;
- Contagion, liquidity, and credit risk remained high but stable while market risk increased after having partially materialised already in the previous quarter;
- The weak economic prospects, together with an intensified geopolitical uncertainty both inside and outside the EU led to an increase in volatility for most markets, signalling increasing market concerns; and
- Going forward, key risk concerns in the EU include high asset valuations driven by search-for-yield, weak economic prospects, resurgence of public debt policy issues in a number of members states, although to various degrees, and economic and geopolitical uncertainty in the EU's vicinity.

The Risk Dashboard can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-esma_rd_02_2015_909.pdf

(vii) ESMA Strategic Orientation 2016 - 2020

On 15 June 2015, ESMA published its Strategic Orientation 2016 - 2020 (the "**Strategic Orientation**").

The Strategic Orientation records and explains the strategic choices that ESMA has made and will assist in making future choices and trade-offs, in the context of the current legislative and institutional framework. It describes the context in which ESMA operates, ESMA's mission, objectives and activities, the strategic choices that ESMA makes and what implications these choices will have.

The Strategic Orientation has been developed between July 2014 and May 2015. The practical implications of these strategic directions have been developed in a separate internal implementation plan.

The Strategic Orientation can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-esma-935_esma_strategic_orientation_2016-2020.pdf

Credit Rating Agencies Regulation ("CRAs")

(i) ESMA publishes Guidelines on periodic information to be submitted by CRAs

On 23 June 2015, ESMA published guidelines on the periodic information to be submitted to ESMA by CRAs (the "**Guidelines**").

These Guidelines apply to CRAs registered in the EU, and will become effective two months after the publication date.

The aim of the Guidelines set out the information that should be submitted by CRAs to facilitate the consistent supervision of CRAs by ESMA. The Guidelines also seek to clarify ESMA's expectations of the information that should be submitted to ESMA for the calculation of supervisory fees and CRAs market share.

The Guidelines are available via the following link:

http://www.esma.europa.eu/system/files/2015-609.pdf

Market Abuse

(i) Benchmark Regulation Update

On 2 April 2015, the European Parliament updated its procedure file on the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts ("**Benchmark Regulation**"), to indicate that the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") report on Benchmark Regulation would be discussed on a plenary session on 10 April, 2015.

ECON's report on the plenary session held on 10 April 2015 was published on 7 May 2015. The full report is available via the following link:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0131+0+DOC+PDF+V0//EN

Furthermore, in accordance with the updated procedure file, the Benchmark Regulation was due for further consideration by the European Parliament during its plenary sessions to be held from 18 and 19 May 2015, despite the previous indications that the proposed Regulation would not be considered until a plenary session to be held from 7 to the 10 of September 2015.

The European Parliament has agreed a negotiating mandate for the Benchmark Regulation and cleared the way for negotiations with the European Council and the European Commission. If political agreement is reached as a result of these negotiations, the European Parliament will endorse the agreed position at a future plenary session.

The European Council must formally approve the draft Benchmark Regulation before it comes into force. Once the Benchmark Regulation enters into force, there will be a 12 month transitional period for the majority of its provisions.

(ii) Delay announced for the delivery of draft technical standards under the Market Abuse Regulation

On 13 May 2015, ESMA published its correspondence with the European Commission outlining the agreed extension to the deadline for the submission of final DTS (originally due in July 2015) under the MAR.

The agreed extension to the end of September 2015, is a result of the European Commission conducting an early legal review of DTS. This review will evaluate the legality and legislative consistency of technical standards under a number of European Directives including UCITS V, the Transparency Directive, the Central Securities Depository Regulation ("**CDSR**"), MiFID II and MAR.

ESMA's letter is available via the following link:

http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-lettermaijoorfaull_en.pdf

The European Commission's letter is available via the following link:

http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-letter-faull-maijoor_en.pdf.

Packaged Retail Investment Products

(i) The Joint Committee launches discussion on PRIIPs key information documents

On 23 June 2015, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published a Technical Discussion Paper on risk, performance scenarios and cost disclosures for Key Information Documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs**"). The Joint Committee is looking for feedback from all concerned stakeholders by 17 August 2015.

The ESAs are mandated by the Regulation on KIDs for PRIIPs to develop draft RTS on the content and presentation of the KIDs for PRIIPs. The aim of the KIDs is to provide EU retail investors with consumer-friendly information about investment products with the ultimate aim of improving transparency in the investment market. The ESAs issued a first Discussion Paper in November 2014 (JC/DP/2014/02) seeking stakeholders' general views on how these standardised KIDs should be developed.

This Technical Discussion Paper aims to provide stakeholders with an opportunity to comment on certain specific technical areas related to risk, performance and cost information that are required for the RTS to be developed by the ESAs on PRIIPs Regulation

The Technical Discussion Paper aims to collect views on the possible methodologies to determine and display risks, performance and costs in the KID. The paper is split into a section on risk and reward and a section on costs. A number of different methodological options are identified for each element of disclosure.

The discussion paper is available on the websites of the three ESAs: EBA, ESMA and EIOPA. Comments on this discussion paper can be sent using the response form via the 'Consultations' section of the ESMA website.

Next steps

The ESAs expect to follow this Technical Discussion Paper with a final Consultation Paper 7setting out the draft RTS under Article 8 of the PRIIPs Regulation in Autumn 2015. A separate Consultation Paper will also be published for the draft RTS under Articles 10 and 13.

The draft RTS on Article 8 will then be finalised and submitted to the European Commission by 31 March 2016, as set out in the PRIIPs Regulation.

The consultation document is available via the following link:

http://www.esma.europa.eu/system/files/jc_dp_2015_01.pdf

The response form is available via the following link:

http://www.esma.europa.eu/consultation/Joint-Committee-consultation-Key-Information-Document-PRIIPS

Financial Stability Board ("FSB")

(i) FSB letter on progress on 2015 work plan

On 17 April 2015, the Financial Stability Board ("**FSB**") published a letter (dated 9 April 2015) that it sent to the G20 finance ministers and Central Bank Governors ahead of its meeting in Washington D.C. on 16 and 17 April 2015.

The FSB outlined its progress on its work plan (published in February 2015) for the G20 leaders' summit that is due to take place in Antalya between the 15 and 16 November 2015.

In the letter, the FSB announced that

- The publication of a peer review on members' implementation of stronger frameworks and approaches for the supervision of systemically important banks is expected shortly.
- The finalisation of the international standard for total loss absorbing capacity ("**TLAC**") for the Antalya summit is on track.
- Its work on a co-ordinated work plan to promote CCP resilience, recovery planning and resolvability, in conjunction with the Committee on Payments and Market Infrastructures ("**CPMI**"), the International Organisations of Securities Commission ("**IOSCO**") and the BCBS, is on-going. The key elements of this work are set out in the letter.

- A work plan in relation to the standardisation and aggregation of over-the-counter derivatives trade reporting data has been agreed with CPMI and IOSCO,

- Its work to address vulnerabilities in capital market and asset management activities has been prioritised. The FSB will examine the likely near-term risk channels and the options that currently exist for addressing these. It will also consider the longer-term development of these markets and whether additional policy tools should be applied to asset managers with the aim of mitigating systemic risks.

- The work plan to examine the misconduct risks that it detailed in the February 2015 letter has been agreed.

The letter is available via the following link:

http://www.financialstabilityboard.org/wp-content/uploads/FSB-Chairs-letter-to-G20-April-2015.pdf

International Organisations of Securities Commission ("IOSCO")

(i) IOSCO consults on business continuity plans for trading venues and intermediaries

On 7 April 2015, IOSCO announced the launch of two consultation papers on business continuity plans for trading venues and for market intermediaries that focus on finding any gaps in business continuity and recovery planning. The aim of the consultation papers is to enhance the ability of financial markets and intermediaries to manage risks, withstand catastrophic events, and swiftly resume their services in the event of disruption.

The first consultation paper, entitled *'Mechanisms for Trading Venues to Effectively Manage Electronic Trading Risks and Plans for Business Continuity (CR03/2015)'* provides background to the work undertaken by IOSCO's Committee on the Regulation of Secondary Markets on the robustness of trading venues and their business continuity plans and recovery planning, particularly in the light of market disruptions that have occurred in some jurisdictions.

The consultation paper discusses IOSCO's findings based on responses to surveys to both regulators and trading venues and proposes recommendations to regulators to help ensure that trading venues can manage effectively a broad range of evolving risks.

The consultation paper also proposes sound practices that should be considered by trading venues in developing and implementing risk mitigation mechanisms. The sound practices focus on the way in which trading venues manage technology and the potential risks arising from technological developments and electronic trading.

The first Consultation paper is available via the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD483.pdf

The second consultation paper, entitled *'Market Intermediary business continuity and recovery planning (CR04/2015),'* provides background to the work undertaken by IOSCO's Committee on the Regulation on Market Intermediaries on business continuity and recovery planning by market intermediaries. It also proposes two standards for regulators and sound practices that regulators could consider as part of their oversight of market intermediaries.

The second Consultation paper is available via the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD484.pdf

Both consultation periods closed on 6 June 2015 and final reports are expected in due course, following consideration of the comments received.

(ii) IOSCO final report and set of good practices on reducing reliance on CRAs in asset management

On 8 June 2015, the IOSCO published a final report on good practices on reducing reliance on CRAs in asset management.

The report follows a consultation by IOSCO also published in early June. In it, IOSCO stresses the importance of asset managers having appropriate expertise and processes in place to assess and manage the credit risk associated with their investment decisions.

Taking into account the responses received to the consultation, IOSCO has developed a set of eight good practices (included as Appendix A to the report), aimed at addressing any potential remaining over-reliance by asset managers on credit ratings. The good practices are addressed to national regulators, investment managers and investors (where applicable).

IOSCO notes in the report that the use of external ratings continues to constitute a determining element in some asset managers' investment decisions due to investor demands, whether derived from regulatory requirements or their own internal rules. This can result in mechanistic reliance, which could in turn trigger forced asset sales in the event of downgrades.

Investor use of credit ratings is beyond the scope of the report, but IOSCO recommends that, to address these concerns, the FSB consider potential ways to reduce possible investor over-reliance on external ratings as a result of references in regulatory requirements, such as the Basel framework or the regime under the Solvency II Directive (2009/138/EC).

The final report is accessible via the following link:

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD488.pdf

(iii) Irish Funds respond to 2nd FSB-IOSCO Consultation on Non-Bank Non- Issuer GSIFI

On 2 June 2015, Irish Funds responded to the FSB / IOSCO Consultative Document on the "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions".

In its response, Irish Funds call on the FSB/IOSCO to ensure they carry out robust empirical analysis of the sector in identifying any potential risks and take account of the fundamental differences between the banking and asset management industries before finalising their proposals.

The full response is available via the following link:

http://files-eu.clickdimensions.com/irishfundsie-amd4t/files/fsbioscogsifiresponseifia29may2015final.pdf?_cldee=a2VpdGguYnJvbmlAaXJpc2hmdW5kcy5pZQ%3d%3d&urlid=0

(iv) Implementation monitoring of the PFMIs: Second update to Level 1 assessment report

CPMI and IOSCO have published the second update to the Level 1 *"Assessments of Implementation Monitoring of the Principles for Financial Market Infrastructures"* ("**PFMIs**").

Level 1 assessments are based on self-assessments by individual jurisdictions on how they have adopted, within their regulatory and oversight frameworks, the PFMIs' 24 Principles for Financial Market Infrastructures and four of the five responsibilities for NCAs.

The second update to the Level 1 assessments shows that participating jurisdictions have made progress since the previous update in completing the process of adopting legislation, regulations and/or policies that will enable them to implement the PFMIs.

The second update to the Level 1 assessment report is available via the following link:

https://www.bis.org/cpmi/publ/d129.pdf

(v) IOSCO Annual Report

On 12 June 2015, IOSCO published its Annual Report for 2014. The report consists of updates on IOCSCO's performance in 2014 as well as a forecast on expected activities going forward.

Included in the report are individual reports from the Chair of the IOSCO Board; the Chair of the Growth and Emerging Markets Committee; the Chair of the Affiliate Members Consultative Committee and the IOSCO Secretary General as well as the Financial Statements and the Auditors Report.

The full report is available via the following link:

http://www.iosco.org/annual_reports/2014/pdf/annualReport2014.pdf

(vi) IOSCO published report on the credible deterrence approaches in securities market regulation

On the 17 June 2015, IOSCO published a press release announcing the publication of a report, entitled *'Credible Deterrence'* (the "**Report**"), which identifies key enforcement factors that may deter misconduct in international securities and investment markets.

The Report identifies key elements in the prevention of misconduct and financial crime and encourages regulators to consider how they might integrate credible deterrence into new and existing enforcement strategies.

The full press release is available via the following link:

https://www.iosco.org/news/pdf/IOSCONEWS383.pdf

The Report is available via the following link:

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf

(vii) IOSCO: Meeting the challenges of the new financial worlds

On the 17 June 2015, IOSCO met at its Annual Conference in London to progress its work across its policy, research, capacity building and co-operation agenda. IOSCO's private meetings preceded public sessions focusing on the theme of *"Building a New Financial World*" which will focus on conduct standards, financial innovation and the many other challenges which financial regulators and industry face.

A press release on the Annual Conference is available via the following link:

https://www.iosco.org/news/pdf/IOSCONEWS384.pdf

(viii) IOSCO Consultation on Fees and Expenses of Investment Funds

On 25 June 2015, IOSCO published its consultation report on Elements of International Regulatory Standards on Fees and Expenses of Investment Funds (the "**Consultation Paper**"). The deadline to submit comments is 23 September 2015.

The Consultation Paper proposes an updated set of common international standards of best practice for the operators of Collective Investment Schemes ("**CIS**") and regulators to consider.

The Consultation Paper addresses issues identified as being key across jurisdictions, including:

- types of permitted fees and expenses;
- performance-related fees;
- disclosure of fees and expenses;
- transaction costs; and
- hard and soft commissions on transactions.

The Consultation Paper can be accessed via the following link:

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD491.pdf

Capital Markets Union

(i) Capital Markets Union

As readers may be aware from our previous legislative update, the European Commission's Green Paper entitled 'Building a Capital Markets Union ("**CMU**") (the "**Green Paper**"),' was published on 18 February 2015. The stated objective of the Green Paper is to put in place the building blocks for a fully functioning Capital Markets by 2019 in the 28 Member States of the EU.

One of the primary aims of this is to provide businesses with easier access to diverse sources of funding or capital from anywhere in the EU, instead of being heavily reliant on bank funding, which is the current situation. As part of this process, the European Commission is proposing the creation of single market for capital. In addition to diversifying the available sources of finance, the European Commission is looking to boost growth, attract investment and remove barriers to cross-border investment whilst also ensuring an

effective level of consumer and investor protection. A CMU should also encourage growth in the securitisation market, an area that has been slow to recover from the financial crisis.

The Green Paper highlights five main priorities for early action:

- amending the current prospectus regime with a view to making it easier for companies (including small and medium-sized enterprises ("**SMEs**")) to raise capital throughout the EU;
- developing a common minimum set of comparable information for credit reporting and assessment which could help attract funding to SMEs;
- building a sustainable securitisation regime (which can provide investment opportunities and also increase capacity of banks to lend);
- determining whether the recently finalised European Long Term Investment Funds ("**ELTIFs**") regulatory framework can be further enhanced; and
- developing a European private placement market.

The complete Green Paper is available via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2015:63:FIN&from=EN

For further information on the Green Paper, Dillon Eustace has prepared an article discussing the Green Paper which can be viewed on our website via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/EU%20Capital%20Markets%20Union%20WEB.pdf

(ii) Responses to the Green Paper Consultation Document

The publication of the Green Paper also meant the launch of the European Commission's consultation document. The rationale for the consultation process on the CMU is to stimulate debate and receive feedback from all interested parties on the European Commission's overall approach to implementing a CMU. The deadline for submitting responses to the consultation document was the 13 May 2015.

The consultation document is available via the following link:

http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf

Since its publication, various stakeholders and interested parties have publicised their responses to the consultation paper and a number of these are outlined below:

On 17 April 2015, Jonathan Hill, (Member of the European Commission ("**MEP**") responsible for Financial Stability, Financial Services and Capital Markets Union) gave a speech at the Reuters Newsmaker's Event in London.

In his speech he outlined the increased need for CMU as an opportunity to finance growth and to counteract the low growth and high unemployment present in the European Union at the moment.

He also notes the CMU would aid the elimination of obstacles to cross border investment whilst also facilitating access to funding for SMEs, long-term investment projects and inward investment.

Jonathan Hill's full speech is available via the following link:

http://europa.eu/rapid/press-release_SPEECH-15-4796_en.htm

The Irish Department of Finance ("**DoF**") initiated a consultation process on the Green Paper and the potential impact for Ireland of the CMU. The aim of the DoF's consultation was to obtain assistance from domestic stakeholders in the preparation of its response to the Green Paper.

As part of this process, the DoF sought opinion on a number of questions, including:

- potential opportunities for Ireland resulting from a high quality securitisation market;
- possible changes to the current prospectus regime to encourage SMEs to issue debt on the capital markets;
- how equity markets could assist in financing Irish SMEs;
- how the European private placement market could be developed to make it more attractive; and
- what should represent appropriate regulation for crowd funding initiatives with an option to passport regulated initiatives across the EU.

The DoF consultation process closed on 21 April, 2015 and on 15 May, 2015 the DoF published a consolidated response to the Green Paper.

In this response, the DoF welcomed the focus on both long and short term goals and is broadly supportive of the implementation of the CMU. However, the DoF expressed

concerns about the mandatory harmonisation of certain legislation and instead opined that a voluntary sign-up mechanism would be more beneficial.

The DoF is also of the opinion that the CMU action plan should contain concrete proposals targeted towards the type of SME enterprises in Ireland that are for the most part, smaller than the SMEs in other European Member States.

The full response is available via the following link:

http://www.finance.gov.ie/sites/default/files/15-05-13%20Irish%20Department%20of%20Finance%20response%20to%20the%20Commission%20consultation%20on%20Building%20a%20Capital%20Markets%20Union.pdf

On 12 May 2015, the European Covered Bond Council ("**ECBC**") announced its formal response to the Green Paper, by calling for the introduction of a new financial instrument in the European Union - European Secured Notes ("**ESNs**"). The aim of ESNs would be to address a funding segment located between the traditional covered bond and high-quality securitisation.

The full response is available via the following link:

http://www.hypo.org/DocShareNoFrame/docs/1/IIAIJAADGCNFDCPAIEHDFIDJPDW19DBDADTE4Q/EMF/Docs/DLS/2015-00030.pdf

On 12 May 2015, the Chair of ESMA, Steven Maijoor, delivered a keynote address at the Luxembourg Stock Exchange Day, entitled "Priority of a Capital Markets Union (ESMA/2015/854)".

In his address he noted:

- the current state of the EU economy and how initiatives, such as the development of a CMU are essential to solving the economic issues the EU economy faces;
- the need to provide alternative sources of funding to the real economy including the development of a CMU;
- the importance of ensuring sufficient investor participation in a CMU by developing a high degree of investor protection; and
- the need to develop a Europe-wide comprehensive supervisory approach.

He concluded by stressing the importance of non-bank financing in stimulating the economy.

The full key note address is available via the following link:

http://www.esma.europa.eu/system/files/2015-854_priorities_of_a_capital_markets_union_steven_maijoor_at_luxembourg_stock_exchange_12_may_2015.pdf

On 13 May 2015, the European Fund and Asset Management Association ("**EFAMA**"), the representative association for the European Investment Management Industry, published its formal response to the Green Paper. In its response the EFAMA welcomed the CMU initiative, stating that an integrated CMU that succeeds in unlocking capital and shifting it towards long-term investments will be to the benefit of investors, who are the 'cornerstone' of the asset management industry.

Peter de Proft, Director General of EFAMA, commented:

"*Europe is facing an important challenge, which is also a unique opportunity. We very much welcome the fact that EU policymakers are embracing the opportunities that the asset management industry offers in terms of supporting sustainable economic growth and long-term financing*."

In its response, EFAMA also underlined the necessary conditions to make a CMU successful, in its opinion. In particular it highlights the crucial role of promoting long-term savings and creating a single market for personal pensions.

EFAMA reiterates that it is crucial to ensure a regulatory level playing field and consistent regulation across sectors in the distribution of similar retail investment products.

Finally, EFAMA seeks to remind EU policymakers that the Financial Transactions Tax ("**FTT**") represents a potential significant obstacle to the successful implementation of a CMU. This proposal carries a significant risk which would cause distortions to the creation of an EU single market as it would relocate financial activities outside of the 11 participating Member States, or if applied in the 28 Member States, outside of the EU altogether. FTT would increase the costs for investors as it will render EU investment funds more expensive. It would also jeopardise long-term savings, growth and investment as it would channel investments to products not subject to FTT.

EFAMA's full response is available via the following link:

http://www.efama.org/Publications/Public/EFAMA%20response%20to%20CMU%20Green%20Paper.pdf

On 15 May 2015, Finance Watch, an independent, non-profit public interest association, published its response to the CMU.

According to Finance Watch, the whole debate about the need to increase the supply of credit to the real economy is focussed on quantity and not quality of credit. Furthermore, Finance Watch are of the opinion that the increased supply of credit does not necessarily rectify the lack of growth and job creation in the European Union.

Finance Watch continues by stating that it sees no compelling need to change the European banking model to a funding model where Capital Markets have a greater role. Finance Watch opines that the focus instead should be the promotion of stable funding as opposed to any funding.

Finance Watch's full response is available for download via the following link:

http://www.finance-watch.org/our-work/publications/1086-response-green-paper-cmu

On 15 May, 2015 the Irish Funds (formerly known as the Irish Funds Industry Association ("**IFIA**")), the trade body representing the largest sector of the financial services industry in Ireland, responded positively to the Green Paper.

Commenting on the initiative Pat Lardner, CEO at Irish Funds, said:

"*The IFIA is strongly supportive of the CMU initiative as a significant opportunity for the Irish funds industry. As a major investment fund domicile and fund servicing centre, Ireland can play a key role in the development, promotion and servicing of investment fund solutions to address the objectives of CMU*."

Irish Funds' full response to the Green Paper is available via the following link:

http://files-eu.clickdimensions.com/irishfundsie-amd4t/files/ifiaresponsetocommissioncmugreenpaper_final_13.05.2015.pdf?_cldee=cGF0cmljay5yb29uZXlAaXJpc2hmdW5kcy5pZQ%3d%3d&urlid=1

On 15 May 2015, the Central Bank published its response to the Green Paper.

The Central Bank is broadly supportive of measures that will increase the safety and efficiency of Europe's capital markets through the provision of sustainable range of finance to the European economy. The response outlines the benefits of creating a true CMU in Europe whilst also examining the potential barriers.

The full response is available via the following link:

http://www.centralbank.ie/regulation/euandint/eu/Documents/2015-05-13%20-%20Central%20Bank%20of%20Ireland%20-%20Capital%20Markets%20Union%20-%20Final.pdf

(iii) Capital Markets Union – the next steps

The European Commission organised a CMU conference in Brussels on CMU on 8 June, 2015, entitled *'Next Steps to Build a Capital Markets Union,'* which concluded its consultation process.

During this conference, it was announced that an Action Plan based on the over 700 submissions received on the Green Paper, will be published in September 2015. The first concrete proposals are expected to follow within a few weeks of the publication of the Action Plan.

Early actions will include:

- A comprehensive package on securitisation, with updated calibrations for the Solvency II Directive (2009/138/EC) and the CRR (Regulation 575/2013);
- The definition of infrastructure and revised calibrations for Solvency II; and
- Proposals to review the Prospectus Directive (2003/71/EC).

On 10 June 2015, the European Commission made the responses it received to its consultation on the Green Paper on Capital Markets Union (CMU) available on its website.

All of the responses received are available via the following link:

https://ec.europa.eu/eusurvey/publication/capital-markets-union-2015?language=en

A press release on the conference is available via the following link:

http://europa.eu/rapid/press-release_SPEECH-15-5137_en.htm

Prospectus Directive

(i) Responses to the Review of the Prospectus Directive Consultation Paper

Responses to the consultation paper on the review of the Prospective Directive were published on 10 June 2015 by the European Commission.

The purpose of the consultation was to gather views on the functioning of the Prospectus Directive and associated implementing legislation. The consultation covered a broad range of issues, including, the scope of the prospectus requirement and the exemptions, the appropriate level of investor protection, possible ways to reduce administrative burden and costs that seem unnecessary, cross-border issues and the possibility to make the regime more appropriate for SMEs and companies with reduced market capitalisation.

The 181 responses to the directive are available via the flowing link:

https://ec.europa.eu/eusurvey/publication/prospectus-directive-2015?language=en

The Joint Committee (ESMA, EIOPA and EBA)

(i) ESA's Joint Committee report on cross-sector risk facing EU financial systems

On 5 May 2015, the Joint Committee of ESAs published its fifth bi-annual report detailing the 'Risks and Vulnerabilities in the EU Financial System' (the "**Report**").

Although the Report found that the risks affecting the EU financial system remain broadly unchanged in substance since the last report in August 2014, ESAs noted that some risks have further intensified.

The major risks include:

- Low growth, low inflation, volatile asset prices and their consequences for financial entities;
- Search for yield behaviour exacerbated by potential rebounds;
- Deterioration in the conduct of business; and
- Increased concern about IT risks and cyber-attacks.

In spite of these intensified risks, the report noted that there has been improved stability and confidence in the financial system as a result of a range of different policy and regulatory initiatives are contributing to and

The full report is available via the following link:

http://www.eba.europa.eu/documents/10180/534414/JC+2014+18+%28Report+on+risks+and+vulnerabilities+in+the+EU+financial+system+spring+2014%29.docx.pdf

(ii) Highlights from Consumer Protection Day 2015

On 3 June 2015, the Joint Committee of the ESAs held its third Joint ESA Consumer Protection Day in Frankfurt. The event attracted over 300 consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry (banking, securities, insurance and pensions).

Key topics addressed included conduct risk, digitalisation of financial services and challenges for the next decade in banking, securities, insurance and pensions.

On 5 June 2015, the EBA published a document outlining the highlights from the joint ESAs Consumer Protection Day. This document can be accessed via the following link:

http://www.eba.europa.eu/documents/10180/1100425/Highlights+from+the+2015+Joint+Consumer+Day.pdf

(iii) Financial Regulatory Developments

On 4 June 2015, AIMA responded to the EBA's consultation paper on guidelines on sound remuneration practices under CRD4 (the "**Guidelines**"). AIMA outlines several concerns in respect of the Guidelines in its response, as follows:

- Proportionality: AIMA outlines that the EBA's interpretation of the proportionality principle could have serious negative implications for AIMA members and that it should allow firms to neutralise certain provisions of the remuneration principles where proportionate to do so;

- Scope: In respect of the EBA's proposal to apply the Guidelines to staff of delegate entities of a CRD4 group company AIMA outlines that CRD4 does not mention any requirements applying to staff outside the group; and

- Unintended Tax and Regulatory Impacts: AIMA discusses the possible tax consequences of the Guidelines on limited liability partnerships or limited partnerships if dividends paid to a CRD4 group company's shareholders or profit allocations to partners or members of partnerships are considered remuneration where those individuals are otherwise "identified staff" as well. In AIMA's opinion these payments are not remuneration but it envisages disproportionate tax consequences if they are treated as such.

AIMA's response can be accessed via the following link:

http://www.aima.org/objects_store/eba_guidelines_on_sound_remuneration_policies_under_crd_iv_-_response_to_consultation.pdf

Central Bank of Ireland

(i) Central Bank Annual Report

On 30 April 2015, the Central Bank published its Annual Report for 2014 (the "**Report**"). It documents the Central Bank's key activities and developments for 2014.

The Report discusses the continuing progress displayed by Irish economy and more specifically the banking sector since emerging from the EU-International Monetary Fund Programme at the end of 2013. The Report notes the gradual improvements in the balance sheets of banks and their customers.

The Report also outlines the introduction of the SSM that came into force in November 2014. The SSM resulted in the transferal of the final responsibility for the prudential supervision of the main Irish banks to a new institutional arrangement within the euro area. The Central Bank's support and participation in the SSM was also noted. In preparation for the introduction of the SSM, the Irish banks participated in a comprehensive Eurosystem risk assessment carried out by the Bank. In response to this major change in the approach to supervision in Europe, the Bank's resources for the supervision of banks were extensively re-organised during 2014.

The Annual Performance Statement (the **"Statement**") outlines how the focus of the Central Bank was on the supervision of mortgage arrears and distressed SME loans on banks' balance sheets. The Statement also reports on the progress being made on the management of these issues during the year.

The Central Bank also reviewed its Anti-Money Laundering ("**AML**") /Counter-Terrorism Financing ("**CTF**") supervisory strategy in 2014. The Report also outlines the Central Bank's Performance Plan for 2015, including its plans to continue conducting AML inspections in 2015.

Finally, the Central Bank reports on its financial profit of €2.1 billion for 2014, resulting in €1.7 billion being paid to the Exchequer from the Central Bank's retained earnings.

The Report is available via the following link:

http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Annual%20Report%202014.pdf

(ii) Central Bank Quarterly Bulletin for Q2 2015

On 1 April 2015, the Central Bank published quarterly results and forecasts for the Irish economy as at Q2 2015. In its report the Central Bank predicts that the strengthened growth

seen in the Irish economy will continue, due to the improving labour market and increasing disposable incomes providing greater support to consumer and investment spending in 2015 and 2016.

The full bulletin is available via the following link:

http://www.centralbank.ie/publications/Documents/Quarterly%20Bulletin%20No.%202%202020 15.pdf

(iii) Central Bank Settlement Agreements

On 21 May 2015, the Central Bank released a publication outlining details of the first ever settlement agreement with the Central Bank that resulted in a monetary fine being imposed against an individual. The fine was imposed as a result of misrepresentation by the 'Head of Finance and Compliance' of a firm's true regulatory capital position.

Although the fine of €105,000 imposed will not be paid as the individual in question is bankrupt, both the amount of the fine and the length of the disqualification period of 10 years imposed are indicative of the seriousness that breaches of regulations are viewed by the Central Bank.

Details of the full settlement agreement are available via the following link:

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

(iv) Central Bank's Consumer Protection Function Reviewed

On 24 March 2015, the Central Bank published the outcome of an external review, conducted by the Netherland's Authority for the Financial Markets (the "**AFM**"), on its consumer protection function.

The AFM is the independent supervisory authority in the Netherlands specialising in the savings, lending, investment and insurance markets.

The review which was conducted using the G20/OECD High Level Principles on Financial Consumer Protection as a benchmark, noted the dedication of the Central Bank to continually strive to achieve better outcomes for consumers despite the Central Bank's consumer protection mandate being relatively new.

The review also identified possible areas for improvement and made recommendations to further develop the existing model and approach.

The complete text of the review is available via the following link:

http://www.centralbank.ie/press-area/press-releases/Documents/A%20Review%20of%20Consumer%20Protection%20Function%20of%20Central%20Bank%20of%20Ireland.pdf

(v) Central publication on Fund Management Company Boards

On 12 June 2015, the Central Bank published a document in relation to '*Fund Management Company Boards'* which comprised of the following:-

- A Feedback Statement on the Central Bank's Consultation Paper ("**CP86**") on "Fund Management Company Effectiveness – Delegate Oversight" which was published in September 2014;
- A Consultation on Delegate Oversight Guidance;
- Guidance on Organisational Effectiveness;
- Guidance on Directors' Time Commitments; and
- Provisions regarding the next steps of the Central Bank.

In CP86, the Central Bank suggested certain proposals in order that fund management companies:

(i) Exercise sufficient control over their delegates through close oversight of delegated tasks on a day-to-day basis;

(ii) Exercise effective control over the management company's own operations and activities; and

(iii) Have boards which are composed of the right mix of experience and expertise to achieve, inter alia, the highest standards of oversight of such delegates.

Such proposals included:

- Guidance on how fund management companies should oversee delegates;
- Reduction of the number of existing managerial functions and streamlining these functions;
- Removal of current requirement to have two Irish resident directors (and suggesting replacement provisions); and

- Introduction of a requirement to provide a rationale for board composition.

In its June publication, the Central Bank indicated that it intends to proceed with a number of changes including:

- The streamlining of the managerial functions;
- Requiring fund management companies (as part of the authorisation process) to document the rational for the composition of the board;
- Introduced guidance to assist boards and directors in assessing the time commitments of individual directors in fulfilling their roles.

Boards should review their current board composition, taking into account the Directors' Time Commitments Guidance, to ensure that each director appointed has sufficient time allocated to their role and that directorship numbers are kept at an acceptable and manageable level.

Fund management companies will have until the 30 June 2016 to update their plans/programmes of operation to reflect the revised managerial functions and the organisational effectiveness role.

For further information, Dillon Eustace has published an article, which provides details on the topics covered in the Central Bank's publication that can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Fund%20Management%20Company%20Boards%20-%20Latest%20Update%20from%20Central%20Bank.pdf

The Workplace Relations Act 2015

(i) Workplace Relations Act signed into law

The Workplace Relations Act 2015 (the "**Act**") was signed into law by the President on 20 May 2015. Following this, it was announced in a Department Jobs, Enterprise and Innovation press release on 8 June 2015, that the Minister for Jobs, Enterprise and Innovation, Richard Bruton, (TD) stated that, notwithstanding that a commencement order hasn't been signed, the 2014 Act will commence on 1 October 2015.

As readers may be aware from our previous legislative updates, the Act represents a significant development in Irish Employment Law, introducing reforms for how workplace disputes are processed. The Government's objective is to deliver a world-class workplace

relations service which is simple to use, independent, effective, impartial, cost effective and provides for workable means of redress and enforcement, within a reasonable period of time.

The Act is available via the following link:

http://www.irishstatutebook.ie/pdf/2015/en.act.2015.0016.pdf

Fitness and Probity

(i) PCF Return Updates

In order to correctly capture the details of individuals who have been appointed to the new Pre-Approved Control Functions ("**PCF**"), as outlined in S.I. No394 of 2014 (the "**Amending Regulation**"), a regulatory return report has been added to the Central Bank's Online Reporting System ("**ONR**"). This return was made available via the ONR on Thursday, 28 May 2015 and the deadline for submission was the 30 June 2015.

As the submitted data will be used to update the Central Bank's internal systems, late submissions are not being accepted.

This return only applies to the six new Pre Approved Control Functions outlined below and only applies to those six PCF's that were in situ on 31 December 2014:

- The office of **Chief Operating Officer (PCF-42)** for all regulated financial service providers;
- **Head of Claims (PCF-43)** for Insurance Undertakings;
- **Signing Actuary (PCF-44)** for Non-Life Insurance Undertakings and Reinsurance Undertakings;
- **Head of Client Asset Oversight (PCF-45)** for Investment Firms;
- **Head of Investor Money Oversight (PCF-46)** for Fund Service Providers;
- **Head of Credit (PCF-47)** for Retail Credit Firms.

The Central Banks's Guidance is available via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance%20on%20Fitness%20and%20Probity%20Amendment%202014.pdf

Data Protection

(i) General approach reached on the European Commission proposal on the Data Protection Regulation

On 15 June 2015, Ministers in the Justice Council reached a general approach on the European Commission proposal on the Data Protection Regulation. The shared ambition is to reach a final agreement by the end of 2015.

The aim of the data protection reform launched by the European Commission in 2012 is to enable people to better control their personal data. At the same time modernised rules will allow businesses to make the most of the opportunities of the Digital Single Market by cutting red tape and benefiting from reinforced consumer trust. A more rigorous and coherent data protection framework will provide for greater legal and practical certainty for citizens, businesses and public authorities.

The general approach on the Data Protection Regulation includes agreement on:

- *One continent, one law*: the Data Protection Regulation will establish a single set of rules on data protection, valid across the EU. Companies will deal with one law, not 28. It is anticipated that this change will save businesses around €2.3 billion a year. In addition, the new rules will particularly benefit SMEs, reducing red tape for them. Unnecessary administrative requirements, such as notification requirements for companies, will be removed. It is anticipated that this measure alone will save them €130 million per year;

- *Strengthened and additional rights*: the right to be forgotten will be reinforced. When citizens no longer want their data to be processed and there are no legitimate grounds for retaining it, controllers will be required to delete the data, unless they can show that it is still needed or relevant. Citizens will also be better informed if their data is hacked. A new proposed right to data portability will make it easier for users to transfer personal data between service providers;

- *European rules on European soil*: companies based outside of Europe will have to apply the same rules when offering services in the EU;

- *More powers for independent national data protection authorities*: those authorities will be strengthened in order to effectively enforce the data protection rules, and will be empowered to fine companies that violate EU data protection rules;

- *The 'one-stop shop'*: the rules will establish a 'one-stop shop' for businesses and citizens: companies will only have to deal with one single supervisory authority, not 28, making it simpler and cheaper for companies to do business across the EU. Individuals

will only have to deal with their home national data protection authority, in their own language - even if their personal data is processed outside their home country.

The associated press releases can be accessed via the following link:

http://europa.eu/rapid/press-release_IP-15-5176_en.htm

http://europa.eu/rapid/press-release_MEMO-15-5170_en.htm

(ii) Data Protection Commission Investigates Enforced Subject Access Requests

More than 40 of Ireland's biggest organisations, across a variety of sectors, have been contacted by the Data Protection Commissioner (the "**DPC**") in order to assess whether they are in compliance with obligations surrounding '*Enforced Subject Access Requests'*. The organisations concerned were selected at random.

'*Enforced Subject Data Requests'* involve a situation whereby an individual is required to make a data access request and deliver the information provided under such a request to a potential employer. Enforced Subject Data Requests became an offence under data protection legislation in July of last year.

The DPC has outlined that it intends to "*vigorously pursue and prosecute any abuse detected*". The companies contacted were given three weeks to respond to the DPC and it is intended that follow-up inspections will be carried out by the DPC on this matter.

Financial Services Ombudsman

(i) Ger Deering Appointed as Financial Services Ombudsman ("FSO")

On 20 April 2015, Ger Deering took up his appointment as the Financial Services Ombudsman ("**FSO**") and will subsequently oversee the integration of the offices of the FSO and the Pensions Ombudsman ("**PO**") when the necessary legislation is enacted. Mr Deering is replacing Bill Prasifka who has completed a 5-year term in the role.

Companies Act 2014

(i) Introduction

The Companies Act 2014 ("**CA 2014**") commenced on 1 June 2015 and the previous Companies Act 1936-2013 has been almost entirely repealed save a number of limited exceptions.

CA 2014 significantly reforms Ireland's company law regime by consolidating, reforming and amending all existing pieces of company legislation. It impacts every Irish company and has implications for all directors and shareholders. Please see our website (http://www.dilloneustace.ie/publications) for various Dillon Eustace updates on the key elements of CA 2014.

The CA 2014 deals with all types of companies within the one piece of legislation, including two types of private company limited by shares (see further below); a private company limited by guarantee; an unlimited company; several types of public limited and unlimited companies; as well as the Societas Europea.

(ii) New Forms of Company

CA 2014 provides for several new types of company. These include a designated activity company ("**DAC**"), a company limited by shares ("**LTD**"), a public limited company/ societas europaea, an unlimited company, a guarantee company, an unregistered company and an investment company.

Private companies limited by shares will be required to make a decision as to which of the following types of company it wishes to be under CA 2014:

(a) registered under Part 2, of the CA 2014, and given the designation of "limited" or "LTD";

(b) registered under Part 16, in which case it will be referred to as a "designated activity company" or "DAC" ; or;

(c) another type of company (public limited company, societas europaea etc).

CA 2014 provides for an 18 month transition period that commenced on 1 June 2015. At the end of that transition period, where an existing private company fails to elect to convert to some other type of company, that company will be deemed to have become a LTD. The most efficient way to convert is for the shareholders to pass an ordinary resolution adopting a new constitution in place of the existing memorandum and articles of association and changing the company name, within 15 months of the commencement date of 1 June 2015.

LTD: Company Limited by Shares

The key features of the new model private company, the LTD are:

- A LTD can have between 1 and 149 shareholders, with limited liability;
- A LTD may have just one director;

- A LTD must have a company secretary. Where there is only one director, the sole director cannot also act as company secretary;
- A LTD must have a one-document constitution (to replace the current memorandum and articles of association);
- A LTD's new constitution cannot have a clause that limits the objects and business of the Company. This is known as an objects clause. This means a LTD has full unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction;
- The board (including a sole director) of an LTD will automatically be deemed to have authority to bind the company;
- A LTD cannot list any securities (including debt).
- If your company needs to list securities, then the DAC option should be chosen;
- A LTD may dispense with holding an annual general meeting even where it has more than one member
- The "ultra vires" rule (i.e. the rule whereby a company's legal capacity was limited to the objects set out in its memorandum of association) has been abolished.

Designated Activity Company ("DAC"):

The other form of private limited company provided for under CA 2014 is the DAC. A DAC is the closest of the new company types to an existing private company. It must be noted that existing credit institutions and insurance companies are also obliged under CA 2014 to convert to a DAC.

The key features of a DAC are:

- A DAC can have an objects clause, so the company's corporate capacity will be restricted. A DAC will also be capable of listing debt securities on a stock exchange and publish an offering document.
- A DAC will have a two-document constitution.
- A DACs name must end with "designated activity company" or the Irish equivalent.
- A DAC must have at least two directors.

- Similar to the previous Companies Acts 1963-2013, single-member DACs may dispense with holding an annual general meeting, multi-member DACs may not.

(iii) Other Points of Note

Financial Statements

As regards the approach in relation to financial statements, the Commencement Order clarifies:

1. If the financial year ends before 1 June 2015 and the financial statements are signed by the director(s) before 1 June, they must be prepared and filed in accordance with the 1963-2013 Companies Acts; and

2. If the financial year ends after 1 June 2015, the financial statements must be prepared and filed under the 2014 Act.

Under the Commencement Order the following new obligations in Part 6 of the 2014 Act will be commenced in respect of financial years beginning on or after 1 June 2015:

- Section 167: Audit committees;
- Section 225: Director's compliance statement and related statement;
- Section 305(1)b: Share options disclosure;
- Section 306(1): Payments to connected persons;
- Section 326(1)a: Director's names;
- Section 330: Directors' report: statement on relevant audit information.

Central Bank Issues Q&A on the Companies Act 2014

On 12 June 2015 the Central Bank issued a Question and Answers document on the 2014 Act as part of its Market Update.

The question outlined within is as follows:

Question:

Does the Central Bank require UCITS management companies, AIFMs, AIF management companies, fund administrators, depositaries and investment firms which are companies to convert to a DAC under the 2014 Act?

Answer:

Section 18(2) of the 2014 Act prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies Registration Office as a DAC unless they are public limited companies. The 2014 Act does not require other regulated financial service providers which are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.

The complete markets update is available via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Pages/default.aspx

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

(i) MLD4 published in the Official Journal

On 5 June 2015, the Fourth Money Laundering Directive (Directive (EU) 2015/849) ("**MLD4**") was published in the OJ. MLD4 extends and replaces the Third Money Laundering Directive ("**MLD3**"), which is the existing EU AML and counter terrorist financing ("**CTF**") regime.

Member States are obliged to transpose MLD4 into national law by 26 June 2017.
Background

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

Consequently, the first draft of MLD4 was published in February 2013 and political agreement was reached at the end of 2014. MLD4 was published in the OJ following adoption by the European Council in April 2015 and by the European Parliament in May 2015. MLD4 is designed to strengthen the EU's defences against money laundering and terrorist financing.

Some of the important aspects of MLD4 include:

- the risk-based approach;
- beneficial ownership;
- the scope of customer due diligence requirements;

- politically exposed persons ("**PEPs**");
- reliance on third parties;
- enforcement.

Next Steps

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

Dillon Eustace has published an article on MLD4 which is available via the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Client%20Briefing_%20Fourth%20Money%20Laundering%20Directive%20IV.pdf

(ii) Central Bank Settlement Agreement for breaches of AML regulations

In order for the Central Bank to ensure on-going compliance with the statutory obligations imposed on designated persons since the introduction of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "**2010 Act**") and its amendment by the Criminal Justice Act 2013 (the "**2013 Act**") (together the "**Act**"), the Central Bank commenced themed AML/CTF inspections during the summer of 2014.

Although both the number and level of fines imposed as a result of breaches were minimal, the latest settlement agreement announced on 19 May 2015, resulted in a fine of €1.75 million being imposed on a money remittance service provider.

This fine, along with AML/CTF's recurring appearance on the Central Bank's annual Enforcement Priorities, are indicative of the gravity to which the Central Bank views AML and CTF compliance.

The Central Bank's Enforcement Priorities for 2015 are available via the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankpublishesenforcementprioritiesfor2015.aspx

Although the unusually high settlement agreement against the service provider could be attributed to a deterrence mechanism and the risks inherent in a business of that size and nature, the investigation highlighted four key deficient areas that resulted in an increased fine being imposed:

- Policies and procedures in relation to AML/CTF
- Systems for monitoring and identifying suspicious activity
- Customer due diligence record retention;
- Staff Induction and training.

The importance of ensuring the proper implementation of AML/CTF and strict adherence to these particular categories should not be overlooked.

Details of the settlement agreement are available via the following link:

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

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

On 1 July 2015, ESMA published a Q&A to promote the sound, effective and consistent application of EU rules on AML and CTF to crowdfunding.

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

The Q&A are aimed at NCAs to support them in delivering common supervisory approaches and practices in this area, taking into account the characteristics of,

and risks associated with, different aspects of crowdfunding. However, ESMA considers the Q&A will also help market participants by providing clarity on the issues involved.

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

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

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

Irish Taxation Update

(i) EU Savings Directive ("EUSD")

On 18 March 2015, the European Commission published a proposed Directive which seeks to repeal the EUSD from 1 January 2016 (with certain elements of the Directive remaining in situ past this date). The repealing Directive has not yet been adopted by the European Commission.

It is intended to replace the EUSD with the Standard for Automatic Exchange of Financial Account Information (i.e. the Common Reporting Standard ("**CRS**")).

In this way, it is envisaged that for early adopters (which includes Ireland) that the effective start date of the CRS will be 1 January 2016 (new account opening procedures will be required to be in place by 1 January 2016, with pre-existing accounts being those open on 31 December 2015). The first exchange of information is currently targeted to take place by the end of September 2017.

(ii) Base Erosion and Profit Shifting ("BEPS")

Given the potential impact for Irish funds of Action Point 6 of the Organisation for Economic Co-operation and Development's ("**OECD**") BEPS Project (i.e. regarding the prevention of treaty abuse), the Irish Funds Industry Association have made two submissions on the OECD's discussion draft. The latest of these submissions was issued on 17 June 2015.

FATCA

(i) Revenue Commissioners Publish FAQ Document

In June 2015, Revenue issued a FAQs document which is designed to supplement their '*Guidance Notes on the Implementation of FATCA in Ireland*' originally published on 1 October 2014.

These FAQ's provide clarification on a number of matters regarding FATCA registration and reporting.

They also provide for an extension of the Irish FATCA reporting deadline such that the first FATCA reports for Irish Reporting Financial Institutions are now required to be filed with the Irish Revenue Commissioners by 31 July 2015 (extended from the original deadline of 30 June 2015).

The FAQ document is available via the following link:

http://www.revenue.ie/en/business/aeoi/index.html

Investment Association /Financial Regulator Developments

(i) The Investment Association publishes Statement of Principles for Investment Managers

On 28 April 2015, the Investment Association ("**IA**") published a Statement of Principles for Investment Managers (the "**Statement**"). The IA is the trade body that represents UK investment managers.

The Statement sets out what the responsibility of managing other people's money means in practice for corporate culture and individual mind-set. It goes further than the regulatory requirement of "treating customers fairly" and expresses the core Principle that investment managers "always put clients' interests first and ahead of our own" in the execution of their duties.

An accompanying press release provides that Investment managers are playing an increasingly vital role in the economy, in society and in the stewardship of companies with the objective of securing sustainable, long-term economic success. This is happening as longevity increases, pension provision moves away from defined benefit schemes, retirement income delivery is liberalised and bank financing of the economy contracts. This is a source of opportunity for investment

managers but is also, correctly, the cause of closer public scrutiny and demand for higher accountability.

Helena Morrissey, Chair of the IA, stated:

"*Investment managers recognise that they need to welcome scrutiny and to be held accountable. They also need to demonstrate clearly that they have an obsession with high standards of integrity and competence. These Principles go further than regulation to fulfil these requirements. Adherence to the Principles will ensure that clients can be confident in their investment managers' integrity and approach to delivering on the objectives they have agreed*."

Daniel Godfrey, Chief Executive of the IA, stated:

"*The Investment Association's purpose is to work with our members to make investment better for clients, for companies and for the economy. This Statement of Principles is a key step towards that goal*."

Signatories to the Statement will describe publicly their approach to maintaining the Principles and how they identify and deal with the key issues that could compromise their ability to maintain alignment. In addition, they will confirm annually that their processes for this are effective and that any issues identified as a result of their Principles monitoring are being addressed.

The IA will maintain a list of signatories on its website from 31 July 2015, a link to members' descriptions of their approach from 1 January 2016 and a link to annual reports on the Principles from 1 January 2017. Also, the IA will review the Principles, considering uptake, impact and feedback from all stakeholders, in January 2017.

The Statement of Principles for Investment Managers is available via the following link:

http://www.theinvestmentassociation.org/assets/files/press/2015/20150428-statementofprinciples.pdf

Corporate Governance for Investment Firms

(i) Central Bank publishes Consultation Paper on Corporate Governance requirements for Investment Firms

On 5 May 2015, the Central Bank published a consultation paper on Corporate Governance Requirements for Investment Firms (CP No. 94) (the '**Consultation**

Paper'). The consultation paper proposes introducing a number of corporate governance requirements for investment firms, including:

- Mandatory minimum board size of at least 3 directors;
- The role and responsibilities of the Chairman and the CEO;
- The frequency of board meetings (at least four times per calendar year and at least once in every six month period);
- The role and composition of the risk and audit committees.

In addition to the above requirements, further requirements are proposed for firms designated as High and Medium High Impact under the Probability Risk and Impact System ("**PRISM**"), although low risk firms will be encouraged to adopt these additional requirements. It is intended that the requirements will supplement provisions under MiFID II and CRD IV.

Responses to the consultation paper should be submitted to the Central Bank no later than 5 August 2015.

The consultation paper is available via the following link:

https://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP94%20Consultation%20on%20Corporate%20Governance%20Requirements%20for%20Investment%20Firms/CP94%20Consultation%20on%20Corporate%20Governance%20Requirements%20for%20Investment%20Firms.pdf

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