Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 July 2015 – 30 September 2015

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INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

Markets in Financial Instruments Directive ("MiFID")

(i) ESMA update on waivers from MiFID pre-trade transparency requirements

On 26 August 2015, ESMA published an updated version of the waiver document that sets out its assessment of applications for waivers from pre-trade transparency requirements under MiFID.

The waiver document is aimed at competent authorities under MiFID to ensure that, in their supervisory activities, their actions converge with the opinions provided by ESMA. The examples are also intended to help firms by providing clarity as to the content of the MiFID requirements, and to assist them when they intend to develop new trading functionalities.

In the updated waiver document, there is one new ESMA opinion that relates to the submission of large-in-scale orders with two different price limits. The new opinion is set out in red text.

ESMA's updated waiver document can be accessed via the following link:

Compilation of esma opinions positions on pretrade waivers 21082015.pdf

(ii) ESMA publishes Compliance Table regarding the Guidelines on the Application of the definitions in Sections C6 and C7 of Annex 1 to MiFID

ESMA's Guidelines on the Application of the definitions in Sections C6 and C7 of Annex 1 to the MiFID Directive (the "**Guidelines**") and which relate to certain types of derivative instruments apply since 7 August 2015. The Guidelines will be superseded by the European Commission's MiFID II delegated acts when they come into effect.

The purpose of the Guidelines, which apply to the national competent authorities ("**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.

On 14 August 2015, ESMA published a Compliance Table which sets out the competent authorities which comply or intend to comply with the Guidelines.

The Guidelines and Compliance Table can be accessed via the following links:

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

http://www.esma.europa.eu/system/files/guidelines_compliance_table_final_0.pdf

(iii) Updated Central Bank Guidance Note for Authorisation under MiFID

On 17 July 2015, the Central Bank published an updated Guidance Note in respect of firms seeking authorisation under MiFID. The update is to the Client Asset Framework and reflects the recent changes introduced by the Client Asset Regulations published by the Central Bank.

The updated MiFID Note can be accessed via the following link:

Central bank regulation industry sectors investment firms mifid-firms for Authorisation under MiFID.pdf

Markets in Financial Instruments Directive ("MiFID II")

(i) ESMA publishes final draft Technical standards under MiFID II/MiFIR

On 28 September 2015, ESMA published a Final Report (ESMA/2015/1464) (the "**Final Report**") containing twenty eight draft Regulatory and Implementing Technical Standards which had been previously consulted upon in a Discussion Paper published in May 2014 and in two Consultation Papers published in December 2014 and February 2015.

The Final Report deals with technical standards from the areas of transparency (Standards 1-5), market microstructure (Standards 6-12), data publication and access (Standards 13-16), requirements applying on and to trading venues (Standards 17-19), commodity derivatives (Standards 20 and 21), market data reporting (Standards 22-25), post-trading (Standard 26) and investor protection (Standards 27 and 28). It describes the feedback received in the public consultations and the rationale behind ESMA's final proposals.

Annexed to the Final Report are the draft technical standards themselves (Annex I) and the ESMA cost-benefit-analysis (Annex II).

The final draft technical standards have been sent to the European Commission for endorsement. The European Commission has three months in which to approve them.

The Final Report and Annex I are available via the following links:

https://www.esma.europa.eu/system/files/2015-esma-1464-final_report_-draft_rts_and_its on mifid ii and mifir.pdf

http://www.esma.europa.eu/system/files/2015-esma-1464_annex_i_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

(ii) ESMA Consultation on Draft Implementing Technical Standards under MiFID II

On 31 August 2015, ESMA published a Consultation Paper on the remaining draft implementing technical standards ("**ITS**") under MiFID II and MiFIR (the "**Consultation**").

The Consultation seeks views from stakeholders on three draft ITS required under MiFID II on which ESMA has not yet consulted:

- the suspension and removal of financial instruments from trading on a trading venue;
- the notification and provision of information for data reporting services providers; and
- the weekly aggregated position reports for commodity derivatives, emission allowances and derivatives thereof.

ESMA will consider all responses received by 31 October 2015. On the basis of the responses to the Consultation, ESMA will revise the draft technical standards and send the final report to the European Commission for endorsement by 3 January 2016. The final ITS will be applicable from 3 January 2017.

The Consultation can be accessed via the following link:

esma-1301 consultation paper on mifid ii its.pdf

(iii) Responses to ESMA's Consultation Paper on draft guidelines specifying criteria for assessment of knowledge and competence under MiFID II (the "Consultation")

On 22 July 2015, EMSA updated its webpage with responses received in relation to its April 2015 Consultation Paper on draft guidelines for the assessment of knowledge and competence.

ESMA expects to publish a final version of the guidelines in the fourth quarter of 2015. They will apply from 3 January 2017, when MiFID II and MiFIR come into effect.

The updated webpage can be accessed via the following link:

Esma Consultation Draft-guidelines-assessment-knowledge-and-competence

(iv) Securities and Markets Stakeholder Group ("SMSG") Advice to ESMA on Assessment of Knowledge and Competence in the Context of MiFID II (the "Advice")

On 24 July 2015, ESMA published SMSG's Advice in relation to ESMA's April 2015 Consultation Paper on draft guidelines for the assessment of knowledge and competence (the "**Guidelines**").

In the advice, the SMSG reiterated some of its earlier advices regarding the certification of knowledge and competence i.e. the need for training and support and the usefulness of a dialogue with employee representatives on the needs for training and sales policy in general. The SMSG believes that these three elements can reinforce one another.

While the SMSG agrees that the Guidelines should be principle-based rather than overly prescriptive, it at the same time calls for supervisory convergence, peer reviews and transparency on the criteria used by the different member states, as this could facilitate the transfer of best practices and mutual recognition.

The SMSG believes that the Guidelines are about minimum standards of knowledge and competence that apply to anyone providing advice to clients. In this respect, the SMSG favours broad based minimum standards.

While the Guidelines leave it to the NCAs to determine how exactly appropriate knowledge and experience should be assessed, some examples are being given. The SMSG suggests that more prominence be given to the possibility of dedicated courses followed by some kind of certification.

The Advice can be accessed via the following link:

Esma advice on knowledge and competence requirements.pdf

Capital Requirements Directive ("CRD IV")

(i) European Banking Authority ("EBA") updates Single Rulebook Q&A

The overall objective of the EBA's Single Rulebook Q&A ("**Q&A**") is to ensure consistent and effective application of the new regulatory framework across the Single Market, and hence contribute to the building of the Single Rulebook in banking.

The Q&A contains answers to various questions posed by stakeholders on:

- Directive 2013/36/EU (the Capital Requirements Directive ("**CRD IV**");
- Regulation (EU) No 575/2013 (the Capital Requirements Regulation ("**CRR"**);
- Directive 2014/59/EU (Bank Recovery and Resolution Directive ("**BRRD**")); and
- the related technical standards developed by the EBA (which in the case of the BRRD this will also include technical standards under Directive 2014/49/EU (Deposit Guarantee Schemes Directive ("**DGS**") where there are interactions) and adopted by

the European Commission (RTS and ITS), as well as the EBA guidelines.

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 9 times the quarter ending 30 September as follows:

On 3 July 2015, the EBA updated the question below:
Question ID: 2013_550: Use of ECAI credit assessments for the determination of risk weights.

On 10 July 2015, the EBA updated the questions below:
Question ID: 2014_1562: Reporting of Counterparties on LE2 and LE3 Templates - connected counterparties;
Question ID: 2015_1903: Calculation of exposure values of trade exposures with QCCP in accordance with article 306(1)(a);
Question ID: 2015_1861: Counterparty credit risk add-on for repurchase transactions;
Question ID: 2015_1776: Credit Risk Mitigation;
Question ID: 2015_1701: Mark-to-Market Method: Residual Maturity for cash settled contracts;
Question ID: 2014_1619: Applicability of Article 423(1) of the CRR for intermediaries facilitating derivatives clearing between its clients and a CCP; and
Question ID: 2014_1592: Exemptions from the application of Article 395(1).

On 17 July 2015, the EBA updated the questions below:
Question ID: 2015_1795: De minimis and weighting for foreign exchange risk; and
Question ID: 2014_1567: Risk-weighting of pension assets.

On 24 July 2015, the EBA updated the questions below:
Question ID: 2015_1825: Client money;
Question ID: 2015_2109: Powers of the temporary administrator;
Question ID: 2015_2106: Provision of IGFS under Article 23;
Question ID: 2015_2105: Authorisation to breach large exposures requirements in the context of IGFS;
Question ID: 2015_2103: Institution or entity in Article 19 (3) (a);
Question ID: 2015_2102: Intra-Group Financial Support to subsidiaries in third countries;
Question ID: 2015_2098: Contents of group resolution plans;
Question ID: 2015_2096: Usage of Multiple Point of Entry (MPE) and Single Point of Entry (SPE) in resolution plans (scenarios);
Question ID: 2015_2092: Group recovery plans with regard to non-EU subsidiaries;
Question ID: 2015_2091: Joint control (by more than one Union parent undertaking) over a subsidiary;
Question ID: 2015_2083: Interpretation of “group headed by the Union parent undertaking”

in Article 7 (1);
Question ID: 2015_2082: Assessment of group recovery plans;
Question ID: 2015_2079: Meaning of "where relevant" in Article 4;
Question ID: 2015_2078: EBA Guidelines to assess the impact of an institution's failure on financial markets, on other institutions and on funding conditions (Article 4 (5));
Question ID: 2015_2077: Designation of several authorities as resolution authority;
Question ID: 2015_2076: Cooperation, collaboration and assistance of the competent authority to the resolution authority;
Question ID: 2015_2075: Entity that formally is not a part of public administration as resolution authority;
Question ID: 2015_2074: Interpretation of the requirement of structural separation of the competent (supervisory) and resolution functions;
Question ID: 2015_2072: Third country resolution proceedings;
Question ID: 2015_2071: Definition of branches of institutions that are established outside the Union;
Question ID: 2015_2069: Clarification to Recital 41;
Question ID: 2015_1927: Annual Contribution of institutions - determination of the risk weight / use of indicators;;
Question ID: 2015_1926: Annual Contribution of institutions - determination of the basis for annual contributions and the risk weight / use of CRD IV/CRR terminology;
Question ID: 2015_1923: Exclusion of Intragroup Liabilities - General Rule; and
Question ID: 2015_1921: Basis for ex-ante contributions to resolution financing arrangements;

On 31 July 2015, the EBA updated the questions below:
Question ID: 2014_999: Related party balances;
Question ID: 2014-987: LCR inflows/outflows for collateralised stock borrow/lend transactions within 30 day window; and
Question ID: 2014-975: Reporting of Additions (c010) and Reversals (c020) in Table 16.7.

On 14 August 2015, the EBA updated the question below:
Question ID: 2015_1899: Validation Rules v0677_m, v0678_m and v0726_m for Leverage Ratio.

On 21 August 2015 the EBA updated the questions below:
Question ID 2015_1912: Reporting on stable funding; and
Question ID 2015_1889: Initial margin for the purpose of hypothetical capital calculation.

On 28 August 2015 the EBA updated the question below:
Question ID 2014_1644: Operational leasing and its inclusion in a consolidated situation.

On 4 September 2015, the EBA updated the question below:
Question ID 2014_1381: PD substitution and eligibility of guarantors.

The EBA's Single Rulebook Q&A can be accessed via the following link:

http://www.eba.europa.eu/single-rule-book-qa

(ii) EBA identifies divergent supervisory practices in the implementation of its guidelines on the assessment of the suitability of members of the management body and key function holders

On 22 July 2015, the EBA published its peer review report on the assessment of the suitability of members of the management body and key function holders (the "**Report**"). The Report shows that NCAs largely comply with the EBA guidelines. The EBA analysis identified best practices carried out by some NCAs, but also highlighted significant differences remaining between NCAs' supervisory approaches.

The EBA concluded that the existing EBA guidelines have not led to sufficient convergence in supervisory practices, and proposed the incorporation in its forthcoming review of the guidelines of a number of specific best practices observed.

The EBA expects to launch a public consultation on these revised guidelines in the first quarter of 2016, and also intends to send an opinion to the European Commission suggesting a change in the underlying CRD framework.

(iii) European Commission consults on possible impacts of CRD IV on bank financing of economy

On 15 July 2015, the European Commission published a consultation paper and accompanying annex on the possible impact of the CRD IV legislative package on bank financing of the economy.

The consultation paper seeks to assess how the new framework under CRD IV (i.e. CRR and the Directive is working in practice). It focuses on gaining a better understanding of the impact of the new rules on the availability of financing, especially for infrastructure and other investments that support long-term growth, but also for corporate borrowers, including SMEs. The annex to the consultation paper provides facts and trends that could help stakeholders provide more informed replies and further evidence in relation to the questions raised in the consultation paper.

Responses to the consultation paper should be submitted by 7 October 2015 through an online questionnaire. The European Commission intends to publish a feedback report and organise a public hearing later in 2015, following which it will publish a final report in 2016.

The consultation paper and annex can be accessed via the following links:

http://ec.europa.eu/finance/consultations/2015/long-term-finance/docs/consultation-

document_en.pdf
http://ec.europa.eu/finance/consultations/2015/long-term-finance/docs/consultation-document-annex_en.pdf

Client Asset Regulations 2015

(i) Client Asset Regulations effective from 1 October 2015

The Client Asset Regulations are effective from 1 October 2015 and will replace the existing Client Asset Requirements (issued 1 November 2007) from that date.

Dillon Eustace has published an article on Client Asset Requirements for Investment Firms which can be accessed via the following link:

Client Asset Requirements for Investment Firms.PDF

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

(i) BRRD transposed into Irish law

The BRRD has been transposed into Irish law through the European Union (Bank Recovery and Resolution) Regulations, 2015 (S.I. No. 289 of 2015) which commenced on 15 July 2015 (the "**Regulations**").

The Minister for Finance has designated the Central Bank as the national resolution authority under the Regulations. This designation is in addition to resolution powers the Central Bank already exercises under existing domestic resolution legislation.

From 1 January 2016, the designation of the Central Bank as national resolution authority ensures close and effective collaboration and exchange of information between resolution and supervisory staff. Where both functions are carried out within the same organisation, the BRRD requires resolution functions to be operationally separate from supervisory functions.

The Regulations can be accessed via the following link:

http://www.finance.gov.ie/sites/default/files/SI%20289%20of%202015_0.pdf

(ii) EBA - ITS and Guidelines on simplified obligations

The EBA has published its final Guidelines and final draft ITS relating to the eligibility of institutions for simplified obligations in the context of recovery planning, resolution planning and resolvability assessments under the BRRD. These Guidelines establish a set

of indicators against which competent and resolution authorities should assess the impact of the failure of an institution to determine its eligibility for simplified obligations.

Competent authorities and resolution authorities will also be required to notify the EBA on the way they assessed institutions against the criteria set out in the BRRD, including the mandatory indicators specified in the Guidelines, and the nature of the simplified obligations applied to eligible institutions. The EBA will monitor any divergence of approach in the application of simplified obligations and will report accordingly to the European Parliament, the Council and the Commission by 31 December 2017.

The EBA also issued final draft ITS on the procedures, forms and templates for submitting information on resolution plans under the BRRD.

The ITS on procedures, forms and templates for the provision of information for resolution aim to harmonise the process for the submission of such information to resolution authorities and to facilitate the exchange of information between home and host resolution authorities during the resolution planning process for cross-border institutions and groups.

The final draft ITS have been submitted to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and Council before being published in the Official Journal of the European Union. The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply two months and one day after the publication of the translations.

The final Guidelines and final draft ITS can be accessed via the following links:

eba.europa.eu 16 Guidelines on simplified obligations.pdf
eba.europa.eu/documents/10180/EBA-ITS-2015-05 ITS on simplified obligations.pdf

International Organisations of Securities Commission ("IOSCO")

(i) IOSCO - report on cross border regulation

On 17 September 2015, IOSCO published the final report of the IOSCO task force on cross border regulation **("the Report")**. The Report indicates that cross-border regulation is moving towards more engagement via different forms of recognition to solve regulatory overlaps, gaps, and inconsistencies. It states that the increased engagement is mostly bilateral at this stage, while multilateral engagement is likely to develop further as markets continue to grow and emerge around the world, and with the greater use of supervisory Memoranda of Understandings.

The Report provides a detailed resource for regulators. It includes a toolkit of three broad types of cross-border regulatory options, supporting case studies, a description of the processes used to assess comparability of foreign regulatory regimes, and considerations on the application of the toolkit.

IOSCO's future aims in the report are summarized as follows:

- to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation;
- to enhance investor protection and promote investor confidence; and
- to exchange information at both global and regional levels on their respective experiences.

The media release accompanying the report can be viewed at the following link:
https://www.iosco.org/news/pdf/IOSCONEWS400.pdf

(ii) IOSCO - post-trade transparency in the credit default swaps ("CDS") market

On 7 August 2015, IOSCO published a Final Report on post trade transparency in the CDS market (the "**Report**"). The Report analysed the potential impact of mandatory post-trade transparency in the CDS market.

The term "post-trade transparency" in the Report refers to a regulatory system that mandates disclosure of information, widely accessible to the public, about the price and volume or each relevant transaction.

On the basis of the analysis, IOSCO concludes that the data does not suggest that the introduction of mandatory post-trade transparency had a substantial effect on market risk exposure or market activity in the CDS market. IOSCO also identified certain potential benefits and costs to mandatory post-trade transparency, which is set out in part VI of the Report.

IOSCO anticipates that additional data from jurisdictions with mandatory post-trade transparency will enable further studies of the impact of post-trade transparency in the CDS market and other OTC derivatives markets.

The Report can be accessed via the following link:-

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD499.pdf

(iii) IOSCO - timelines and frequency of disclosures to investors

On 30 July 2015, IOSCO published its Thematic Review of the Implementation on the Timelines and Frequency of Disclosure by issuers and collective investment schemes ("**CIS**") to Investors according to Principles 16 and 26 of the IOSCO Objectives and Principles of Securities Regulation (the "**Review**").

The aim of the Review was to describe the current range of regulatory approaches of the 37 participating jurisdictions in the implementation of the IOSCO Principles.

The scope of the Review was limited to periodic and material event-based disclosure frameworks in participating jurisdictions relating to issuers and CIS, and did not cover point-of-sale disclosures pertaining to initial or follow-on offering or listing.

Principle 16 relates to issuers and states that there should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions. [The Review found differences around whether and when information is required to be disclosed, and also that requirements varied according to the type of issuer and the type of information.]

Principle 26 relates to CIS and states that regulation should require disclosure, which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the scheme. [The Review found that timely disclosure requirements on value, risk reward profile and costs of CIS were in place for all jurisdictions.]

The Review can be accessed via the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD498.pdf

(iv) IOSCO's Strategic Direction 2015 - 2020

On 28 July 2015, IOSCO published a Report on the Strategic Direction of IOSCO from 2015 to 2020 (the "**Report**").

IOSCO's Strategic Direction comprises the following:-

- A mission to 2020;
- A Goal intended to support accomplishing the Mission;
- Priorities to support achieving the Goal; and
- An integrated package of Action Plans to deliver the Priorities.

The Strategic Direction follows a review conducted by a Working Group established after the IOSCO Board Meeting in September 2013.

The Report can be accessed via the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD496.pdf

(v) IOSCO - small and medium sized enterprises ("SME") financing through capital markets

On 9 July 2015, IOSCO published a Final Report on SME Financing through Capital Markets (the "**Report**") which provides recommendations for regulators to facilitate capital raising by SMEs in emerging markets.

The Report identifies the challenge facing SMEs in accessing market-based financing and examines some of the successful measures implemented by regulators and other policymakers to assist SMEs in tapping capital markets. The findings are based on survey responses and best practice by IOSCO member jurisdictions.

In recognition of the importance of this issue, the IOSCO Board will have a roundtable on the issue of SME access to market based finance at its next meeting in October 2015.

The Report can be accessed via the following link:

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD493.pdf

Capital Markets Union ("CMU")

(i) European Commission publishes Action Plan on building a CMU

On 30 September 2015, Commissioner Jonathan Hill announced the action plan on building a CMU to enable more funding to flow from Europe's savers to Europe's businesses. Commissioner Hill identified six initiatives that will better enable the CMU to work through the biggest barriers that it currently faces. The six initiatives are:

- acting to encourage more long-term investment in infrastructure. Commissioner Hill outlines that the insurance sector has almost EUR 10 trillion to invest in the European economy and therefore, the CMU will define what an infrastructure investment is and will then lower the capital requirements associated with it. Commissioner Hill envisages that risk charges on infrastructure investment will be reduced by 30%;

- relaunching European securitisation markets. The CMU is proposing a new framework to encourage the take-up of simple, transparent and standardised securitisation, this will set lower capital requirements which will apply when it meets those criteria;

- helping small and medium enterprises SMEs get financing on capital markets modernising the Prospectus Directive so that these documents serve their initial purpose;

- proposing a package of measures to support investors who are willing to take more risk. Commissioner Hill believes that too many start-ups and SMEs cannot get the funding they need here;

- launching a call for evidence on the cumulative impact of the rules that were passed in the financial services sector. Commissioner Hill believes that the CMU need to check that the cumulative impact of these rules has not had any unintended consequences; and

- publishing a Green Paper looking at ways to increase choice for consumers and the cross border supply of retail financial services.

According to Commissioner Hill, there exists a European system that allows investment funds to operate across the EU, but it does not work as well as it should. To remedy this, the action plan includes creating a proper European passport system for investment funds to increase competition and choice for European citizens.

The Action Plan is available at the following link:

http://europa.eu/rapid/press-release_SPEECH-15-5749_en.htm

(ii) European Parliament adopts non-binding resolution on CMU

On 9 July 2015, the European Parliament announced that it had adopted a non-binding resolution on building a CMU, the provisional text of which has been published.

The non-binding resolution states that the CMU should provide a new, more efficient way to channel savings into small business ventures and protect cross-border investors in the EU.

Members of the European Parliament ("**MEPs**") are seeking the following:

- CMU building blocks, such as a wider range of investment choices, risk mitigation tools and clear information on investment opportunities across the EU to be in place by 2018;

- reliable non-bank sources of business finance to be further developed alongside well-established bank financing;

- cross-border insolvency rules that work;

- a recovery and resolution framework to be set up for non-banks, in particular central counterparties;

- high-quality, easily comparable financial information on firms seeking crowd-funding or peer-to-peer loans to be available across borders;

- regulatory markets that are SME-friendly with simple procedures and proportionate administrative burden;

- rules aiming to remove entry barriers for SMEs, rules improving access to finance for innovative companies and prudential standards that are proportionate to the risks that such companies may cause;

The MEPs stress that, to ensure that capital flows efficiently across the EU, the CMU legislation needs to be brought into force in all member states and accompanied by a certain level of standardisation in the financial markets.

The provisional text can be accessed via the following link:

Europarl.eu TA+P8-TA-2015-0268+DOC+PDF+V0//EN

Prospectus Directive

ESMA publishes final report on draft Regulatory Technical Standards ("RTS") on prospectus related issues under the Omnibus II Directive

On 1 July 2015, ESMA published its final report containing draft RTS on prospectus related issues which ESMA is required to submit to the European Commission in accordance with the mandate contained in the Omnibus II Directive. The RTS make amendments to the aspects of the Prospectus Directive and Prospectus Regulation dealing with the way in which a prospectus is permitted to be published. The key points are as follows;

- when a prospectus is published on a website, it shall be easily accessible when entering the website;

- the prospectus must be in a searchable electronic format which cannot be modified;

- the prospectus must not contain hyperlinks (other than to the documents incorporated by reference);

- the prospectus must be downloadable and printable;

- a hyperlink to each document incorporated by reference shall be included in the prospectus;

- in respect of public offers of securities, measures shall be taken so as to avoid targeting residents of Member States or third countries where the public offer is not taking place;

- users must not be required to complete a registration process, accept disclaimers limiting legal liability or pay a fee in order to access a prospectus which has been published electronically;

- the method of publication selected from Article 14 of the Prospectus Directive in respect of a base prospectus does not have to be adopted in respect of each set of final terms issued under the base prospectus; and

- each competent authority shall publish on its website a list of each prospectus approved by the competent authority and how such prospectus can be obtained.

The RTS also include a general requirement that information disclosed in oral or written form regarding a public offer or admission to trading of securities shall not:

- contradict information contained in the prospectus;

- refer to information which contradicts the information contained in the prospectus;

- present a materially unbalanced view of information contained in the prospectus, including by way of omission or presentation of negative aspects of such information; and

- contain alternative financial performance measures concerning the issuer unless also contained in the prospectus.

The European Commission has three months to decide whether to endorse ESMA's draft RTS. The deadline for implementation of the Omnibus II Directive in member states is 1 January 2016.

The Final report can be accessed via the following link:

https://www.esma.europa.eu/system/files/esma-2015-1014_-_final_report_-_draft_rts_on_prospectus_related_issues_under_the_omnibus_ii_directive.pdf

ESMA

(i) ESMA raises its market risk indicator to highest level

On 14 September 2014, ESMA published its Trends, Risks and Vulnerabilities Report No. 2 for 2015 on European Union (EU) securities markets, covering market developments

from January to June 2015 (**the** "**Report**"). It also published its Risk Dashboard No. 3 for 2015 (**the** "**Risk Dashboard**").

Overall, market risks for the European securities markets have increased with ESMA's risk indicator for market risk now at its highest level, "very high". This increase is due to high volatilities and fluctuating performances across asset classes.

ESMA's credit risk indicators remain unchanged at very high levels. While at a lower level, liquidity risk is expected to intensify further, while contagion and operational risk remain unchanged, at high and elevated levels respectively. Key overall risk sources remain: the improved but uneven economic outlook, ultra-low interest rates, high public sector indebtedness and potential weaknesses in market functioning.

The Report also monitors possible vulnerabilities which are provided through specific in-depth analyses, which include:

- shadow banking;
- market liquidity; and
- alternative funding

ESMA will update its Report semi-annually, complemented by its quarterly Risk Dashboard.

The Report and Risk Dashboard can be accessed via the following links:

https://www.esma.europa.eu/system/files/esma_trv_2-2015.pdf

https://www.esma.europa.eu/system/files/esma_risk_dasboard_3-2105.pdf

(ii) EMSA report on European Economic Area ("EEA") prospectus activity in 2014

On 23 July 2015, ESMA published its Periodic Report (**the** "**Report**") on statistical data regarding prospectus activity within the EEA, covering 2014.

The Report has been expanded in comparison to previous versions and contains more detailed information on the structure and content of prospectuses approved during 2014.

While the Report has previously been published semi-annually, it will now be on an annual basis going forward.

The Report can be accessed via the following link:

Esma_EEA_prospectus_activity_in_2014.pdf

(iii) ESMA publishes 17th extract from the European Enforcers Coordination Sessions' ("EECS") enforcement decisions

On 21 July 2015, ESMA published extracts from the EECS' confidential database of enforcement decisions on financial statements (the "extracts"). The decisions included in this extract were taken by national enforcers in the period February 2013 to November 2014.

The aim of the publication is to strengthen supervisory convergence and to provide issuers and users of financial statements with relevant information on the appropriate application of the International Financial Reporting Standards ("**IFRS**").

Publication of enforcement decisions will inform market participants about which accounting treatments European national enforcers may consider as complying with IFRS; that is, whether the treatments are considered as being within the accepted range of those permitted by IFRS. Such publication, together with the rationale behind these decisions, will contribute to a consistent application of IFRS in the EEA.

The 17th extract can be accessed via the following link:

Esma 17th_extract_of the_eecs_database.pdf

(iv) ESMA publishes the Final Report and draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive (Directive 2014/51/EU).

On 1 July 2015, ESMA published its Final Report (**the** "**Report**") containing draft RTS on prospectus related issues in accordance with its mandate under the Omnibus II Directive (**the** "**Directive**"). The Report also includes a summary of the main responses received to ESMA's September 2014 Consultation Paper on these issues.

The draft RTS included in the Report specify procedures for the approval of prospectuses, publication of approved prospectuses and dissemination of advertisements and other information relating to an offer or admission of securities to trading.

Following the consultation, and based on the feedback received, ESMA decided not to respond to the part of the mandate regarding approval which concerns adjustment of time limits and the mandate regarding incorporation by reference. The Report also explains the changes made to the original proposals contained in the consultation paper.

The Report was required to be submitted to the European Commission (EC) by 1 July 2015, following which the EC has three months to decide whether to endorse the RTS. The Directive must be applied by member states from 1 January 2016.

The Report can be accessed via the following link:

Esma final report draft rts on prospectus related issues under the omnibus ii directive.pdf

(v) ESMA Guidelines on Alternative Performance Measures

On 30 June 2015, ESMA published a final report on the guidelines on Alternative Performance Measures (the **"Guidelines**").

The Guidelines will apply to issuers with securities traded on regulated markets, and persons responsible for drawing up a prospectus, and they will be supervised by competent authorities and other bodies in the EU with responsibilities under the Transparency Directive, Prospectus Directive or Market Abuse regulation.

The aim of the guidelines is to encourage European issuers to publish transparent, unbiased and comparable information on their financial performance in order to provide users a comprehensive understanding of their performance.

The guidelines set out the principles that issuers should follow when presenting Alternative Performance Measures ("**APMs**") in documents which qualify as regulated information and address their labelling, calculation, presentation and comparability. Adherence to the guidelines will improve the comparability, reliability and comprehensibility of APMs.

The guidelines provide an overview of feedback received from stakeholders and the ESMA Securities and Markets Stakeholder Group ("**SMSG**") regarding APM issues and ESMA's response to it. The final guidelines presented in Annex IV takes into account the comments and suggestions raised by respondents. The final texts will be published on ESMA's website in the course of 2015 following the translation of the guidelines into the official languages of the EU. The guidelines will become effective on 3 July 2016.

The final report can be accessed via the following link:

Esma_final_report_on_guidelines_on_alternative_performance_measures.pdf

(vi) ESMA Consultation on draft RTS on the Central Securities Depositories Regulation ("CSDR")

On 30 June, ESMA published a second Consultation Paper ("**CP**") on the draft RTS on the CSDR. This second CP is limited to the provisions on buy-in (including appropriate time frames to delivery) of the draft RTS.

ESMA consulted on all the CSDR technical standards from 18 December 2014 to 19 February 2015. The feedback to the consultation called for changing the approach on buy-in with a move of the responsibility for the execution of the buy-in at trading level. ESMA has further analysed the issue and proposed 3 possible options that will serve as the basis

for its cost-benefit analysis, namely; (i) trading level execution, (ii) trading level with fallback option execution, and (iii) CSD participant level execution.

ESMA will consider the responses received to this Paper (submissions have closed) when finalising the technical standards for submission to the EC in September 2015.

The Paper can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-1065.pdf

European Markets Infrastructure Regulation ("EMIR")

(i) Delegated Regulation extending central clearing exemption for pension scheme arrangements under EMIR published in the Official Journal of the EU

On 15 September 2015, Commission Delegated Regulation ((EU) 2015/1515)), (the "**Delegated Regulation**") amending EMIR as regards the extension of the transitional periods related to pension scheme arrangements ("**PSAs**") was published in the Official Journal of the EU.

Article 89(1) of EMIR provides that, for three years after its entry into force, the clearing obligation set out in Article 4 of EMIR does not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements. The three year transitional period also applies to entities established for the purpose of providing compensation to members of PSAs in the event of a default.

The Delegated Regulation extends the three year transitional period referred to in Article 89(1) of EMIR by two years (i.e. until 16 August 2017).

(ii) ESMA discussion paper on review of EMIR standards relating to CCP client accounts

On 27 August 2015, ESMA published a discussion paper seeking stakeholders' views on Article 26 of the Commission Delegated Regulation No 153/2013, which ESMA had drafted under EMIR, and which includes a Regulatory Technical Standard ("**RTS**") for central counterparties ("**CCPs**") on the time horizons for the liquidation period (within which the CCP should be able to either transfer or liquidate the position of a defaulting clearing member and have sufficient margins to cover the exposures arising from the transfer or liquidation of relevant positions) (the "**Discussion Paper**"). This Discussion Paper is aimed at;

- CCPs;
- Clearing Members; and

- Financial Counterparties ("**FCs**") and Non-Financial Counterparties ("**NFCs**") accessing CCPs services of Clearing Members.

Input from stakeholders will help ESMA review the RTS with respect to client accounts and, if necessary, develop a revised draft to submit to the European Commission in the form of a Commission delegated regulation. Before finalising any draft RTS, ESMA will consult with the European Banking Authority ("**EBA**") and the European System of Central Banks ("**ESCB**").

The closing date for responses was 30 September 2015. The Discussion Paper and response received can be found at the following link;

Esma Consultation-Review-EMIR-Article-26-RTS-1532013

(iii) ESMA reports to European Commission on functioning of EMIR framework

On 13 August 2015, ESMA published four reports (the "**Reports**") on how the EMIR framework has been functioning, and providing input and recommendations to the European Commission's EMIR Review. Three of the Reports are required under Article 85 of EMIR, and cover NFCs, pro-cyclicality and the segregation and portability for CCPs. The fourth Report responds to the European Commission's EMIR Review Consultation and includes recommendations on amending EMIR in relation to the clearing obligation, the recognition of third country CCPs and the supervision and enforcement procedures for trade repositories.

The Reports are available on ESMA's website at the following link;

Esma recommends changes EMIR framework

(iv) Provisional version of European Commission's Delegated Regulation on IRS clearing under EMIR

On 6 August 2015, the European Commission published the provisional text of the Delegated Regulation it has adopted that sets out regulatory technical standards for the introduction of a central clearing obligation for over-the-counter interest rate swaps under EMIR (the "**Delegated Regulation**"). The explanatory memorandum to the Delegated Regulation states that the Regulation is in line with the formal opinion adopted by ESMA in January 2015, which was revised in March 2015.

The Delegated Regulation covers interest rate swaps denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features, including the index used as a reference for the derivative, its maturity, and the notional type (that is, the nominal or face amount that is used to calculate payments made on the derivative). The contracts are:

- Fixed-to-float interest rate swaps ("**IRS**"), known as plain vanilla interest rate derivatives;
- Float-to-float swaps, known as basis swaps;
- Forward rate agreements; and
- Overnight index swaps

The Delegated Regulation sets out four different categories of counterparties to which the clearing obligation applies and specifies the phase in periods for each. The different categories and the phase-in periods are as follows;

Category	Counterparty Type	Clearing Obligation Commencement
1	Clearing members of a recognised or authorised central counterparty ("**CCP**") for at least one of the classes of interest rate swaps covered by the Delegated Regulation	6 months after the Delegated Regulation enters into force
2	Financial Counterparties ("**FCs**") and certain alternative investment funds ("**AIFs**") belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion for each of the 3 months after the Delegated Regulation is published in the Official Journal, excluding the month of publication	12 months after the Delegated Regulation enters into force
3	FCs and AIFs not in either category 1 or 2 above	18 months after the Delegated Regulation enters into force
4	Non-Financial Counterparties that exceed the clearing threshold ("**NFC+**") not falling within another category	Three years after the Delegated Regulation enters into force

A contract between two counterparties in different categories would be subject to the clearing obligation from the later date.

The obligation to clear the above referenced OTC derivative instruments will apply not only to transactions entered after the effective date applicable to the relevant category of counterparty but also to transactions concluded between the first authorisation of a CCP

under EMIR (which took place on 18 March 2014) and the later date on which the clearing obligation actually takes effect for the relevant category of counterparty (the "**frontloading requirement**"), unless the OTC derivative entered into has a remaining maturity lower than the minimum remaining maturities which are laid down in the RTS and which are based on the category of counterparty and type of OTC derivative.

The Delegated Regulation is subject to the scrutiny of the European Parliament and the Council of the European Union before it can be published in the Official Journal. If neither body raises an objection it will be published in the Official Journal and will enter into force 20 days after its publication.

An accompanying press release states that this is the first clearing obligation that ESMA has proposed and it is expected to propose obligations for other types of OTC derivative contracts in the near future.

The text of the Delegated Regulation is available at this link:

Europa financial markets derivatives

(v) Feedback statement to CP90 on the supervision of NFCs under EMIR

On 16 July 2015, the Central Bank published a feedback statement to its consultation on the supervision of NFCs under EMIR (which closed on 30 January 2015), (the "**Feedback Statement**"). The Feedback Statement acknowledges the difficulty facing the Central Bank in terms of supervision of NFCs given that the majority of NFCs themselves are not regulated by the Central Bank for the purposes of derivatives trading and only become subject to supervision following the entry into a derivative trade.

Following industry feedback, this approach has been revisited with the Central Bank preferring a risk-based model, thereby focussing on larger users of more complex derivative products.

The Feedback Statement can be found at this link;

Central bank regulation consultation papers

(vi) ESMA report proposes to include ETDs in EMIR's interoperability arrangements for CCPs

On 1 July 2015 ESMA published its final report on interoperability arrangements between EU-based CCPs together with related guidelines and recommendations (the "**Report**"). An interoperability arrangement is an arrangement between two or more CCPs that involves a cross-system execution of transactions.

The Report considered the scope of interoperability arrangements under EMIR to transactions in classes of financial instruments other than transferable securities and money-market instruments. In its Report, ESMA recommends to extend the EMIR provisions related to interoperability arrangements to Exchange-Traded Derivatives ("**ETDs**"). A further extension to OTC derivatives will be assessed at a later stage.

ESMA will submit the Report to the European Commission, Parliament and Council so that its recommendation can be endorsed and implemented.

(vii) ESAs consult on margin requirements for non-centrally cleared derivatives

The Joint Committee of the European Supervisory Authorities ("**ESAs**") (i.e. ESMA, EBA, and EIOPA has published a second consultation paper on draft RTS on risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty under EMIR, (the "**draft RTS**").

For OTC derivative transactions that will not be subject to central clearing, the draft RTS prescribe the regulatory amount of initial and variation margin that counterparties should exchange as well as the methodologies for their calculations. In addition, the draft RTS outline the criteria for eligible collateral.

The draft RTS provides that its requirements will apply from 1 September 2016 but provides for a staggered implementation of the initial margin requirements (from 1 September 2016 to 1 September 2020 depending on each counterparty's aggregate average gross notional amount of non-centrally cleared derivatives) and a different staggered implementation of the variation margin requirements. The proposed implementation aims to give more time to market participants to adapt the legal documentation, develop internal and bilateral processes and implement operational changes.

However, the draft RTS provides that entities with (or belonging to groups with) aggregate average gross notional outstanding of non-centrally cleared OTC derivatives under a threshold value of EUR 8 billion are not subject to the initial margin requirements as provided for in the draft RTS.

The draft RTS proposes that the variation margin requirements will apply from 1 September 2016 where both counterparties have or belong to groups, each of which has an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3.0 trillion and from 1 March 2017 for all other counterparties.

The consultation period closed on 10 July 2015 and it is expected that a comprehensive feedback statement including industry stakeholders' comments will accompany the final draft RTS.

(viii) ISDA EMIR Classification Letter and accompanying Guidance Note

ISDA has published a new classification letter that will enable counterparties to notify each other of their status for clearing and other regulatory requirements under EMIR (the "**Classification Letter**"). The Classification Letter enables a derivatives counterparty to provide to the other sufficient status information to determine the application of certain clearing requirements under EMIR.

The ISDA EMIR Classification Letter and accompanying Guidance Note are available on ISDA's website at; http://www2.isda.org/emir/

(ix) Responses to European Commission services consultation on EMIR implementation

As previously reported in our last legislative update, 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 Consultation closed on 13 August 2015.

The responses include a joint response from HM Treasury, the Bank of England and the FCA on behalf of the UK, in which the UK Authorities identify areas of concern and make suggestions for potential amendments to the requirements under EMIR. It is expected that a summary of all of the responses received will be published at a later date.

Responses to the Consultation can be found at this link;

Europa finance consultations 2015 emir-revision

Packaged Retail Investment Products

(i) Joint Committee update ECON on the work on the RTS under the Regulation on PRIPs

On 14 September 2015, Steven Maijoor, Chairman of the ESAs Joint Committee, updated ECON on the work on the RTS under the Regulation on PRIPs.

According to Mr Maijoor, the work on the PRIIPs Key Information Document ("**KID**") is one of the most important projects that has been undertaken so far by the Joint Committee, particularly given its relevance to investor and consumer protection.

Mr Maijoor believes that the success of the KID will depend on the presentation and content of the document. Mr Maijoor outlines that the risk indicator in the KID will be one of

the main elements that consumers consider when making their investment decision. On the presentation side of things, Mr Maijoor outlines that the Joint Committee will be guided principally by the feedback from the consumer testing.

As regards costs, Mr Maijoor states that the key objective is to provide comprehensive information on costs by means of a summary cost indicator that includes both explicit and implicit costs.

The statement is available in full via the following link:

Esma2015_056_statement_by_steven_maijoor_chair_esas_joint_committee_econ_scrutiny_session_on_priips_14092015.pdf

(ii) EIOPA delivers technical advice on product intervention powers

On 3 July 2015, EIOPA published its technical advice to the European Commission on product intervention powers regarding insurance-based investment products. EIOPA is providing its technical advice, as requested by the European Commission, on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system of the EU or to the stability of the financial system within at least one Member State. The report analyses feedback received by EIOPA following consultation on powers to monitor and temporarily restrict/prohibit the sale of insurance-based investment products.

EIOPA's technical advice takes into account the work that has already been undertaken by ESMA and EBA on product intervention powers in respect to financial instruments and structured deposits respectively, under the Regulation on Markets in Financial Instruments ("**MiFIR**").

This technical advice proposes criteria and factors to be taken into account in determining when such threats or concerns occur. These can be listed in two categories:

- elements concerning the protection of the investor: the ease and cost to switch or sell a product, the situation of the issuer of an insurance-based investment product, the degree of complexity of the insurance-based investment product, type of financial activity or practice of an insurance or reinsurance undertaking; and

- elements that could constitute a potential threat to the integrity and functioning of the financial market such as the risk to resilience or smooth operation of markets.

The full report is available via the following link:

Europa Publications Technical Advice on certain product intervention criteria(published).pdf

(iii) Joint Committee update ECON on the work on the RTS under the Regulation on PRIIPs

On 14 September 2015, Steven Maijoor, Chairman of the ESAs Joint Committee, updated ECON on the work on the RTS under the Regulation on Packaged Retail and Insurance based Investment Products ("**PRIIPs**").

According to Mr Maijoor, the work on the PRIIPs KID is one of the most important projects that has been undertaken so far by the Joint Committee, particularly given its relevance to investor and consumer protection.

Mr Maijoor believes that the success of the KID will depend on the presentation and content of the document. Mr Maijoor outlines that the risk indicator in the KID will be one of the main elements that consumers consider when making their investment decision. On the presentation side of things, Mr Maijoor outlines that the Joint Committee will be guided principally by the feedback from the consumer testing.

As regards costs, Mr Maijoor states that the key objective is to provide comprehensive information on costs by means of a summary cost indicator that includes both explicit and implicit costs.

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Esma2015_056_statement_by_steven_maijoor_chair_esas_joint_committee_-econ_scrutiny_session_on_priips_14092015.pdf

The Joint Committee (ESMA, EIOPA and EBA)

(i) Joint Committee Report on Risks and Vulnerabilities in the EU financial system

On 9 September 2015, the Joint Committee issued its August 2015 Joint Committee Report on Risks and Vulnerabilities in the EU financial system (the "**Report**").

The Report informs on risks in the EU financial system (banking, securities and insurance sector), with a particular focus on cross-sectoral vulnerabilities and developments.

The Report identifies that risks to the EU financial system have persisted since March 2015. Risks resulting from low interest rates, search for yield and low profitability of financial institutions remain present, along with risks related to reductions in market liquidity and their possible implications for asset managers. The fragile recovery of

European economies continues to adversely affect profitability and asset quality of the EU's financial sector.

The Report can be accessed via the following link:

Europa documents Autumn Risk Report.pdf

(ii) The Joint Committee of the three European Supervisory Authorities' ("ESAs") report on prudential assessment of acquisitions and increases of qualifying holdings

On 3 July 2015, the Joint Committee of ESAs published a consultation paper on updated guidelines for the prudential assessment of acquisitions and increases of qualifying holdings in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm.
The main objective of the Guidelines is to provide the necessary legal certainty and clarity with regard to the assessment process contemplated in the sectoral Directives and Regulations[1], by:

- harmonising the conditions under which the proposed acquirer of a holding in a financial institution is required to notify its decision to the competent authority responsible for the prudential supervision of the target undertaking;
- defining a clear and transparent procedure for the prudential assessment by the competent authorities of the proposed acquisition or increase of a qualifying holding;
- specifying clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and
- ensuring that the proposed acquirer knows what information it will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition.

The Guidelines are intended to bring into line the supervisory practices in the financial sector throughout the EU and further clarify the position of proposed acquirers in relation to notifying the competent supervisory authorities that are responsible for the prudential

(a) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;
(b) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);
(c) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, on OTC derivatives, central counterparties and trade repositories;
(d) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;
(e) Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; and
(f) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

supervision of the undertaking. Common procedures are defined to assist supervisory authorities in the assessment process as laid out in EU Legislation.

The ESAs will consider all comments received by 2 October 2015. The guidelines can be accessed via the following link:

Joint Guidelines on Qualifying Holdings.pdf

Market Abuse

(i) ESMA publishes final report on technical standards on Market Abuse Regulation ("MAR")

On 28 September 2015, ESMA published its final technical standards ("**TS**") on the Market Abuse Regulation ("**MAR**"). MAR will generally take effect in Ireland on 3 July 2016 and will replace the existing Market Abuse Directive from that date.

The TS fleshes out certain requirements of MAR and translates how the legislation will apply in practice to market participants, market infrastructures and national supervisors.

The draft technical standards will now be submitted to the European Commission for it to decide whether to endorse them. The European Commission has three months in which to approve them.

The report is available via the following link:

https://www.esma.europa.eu/system/files/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

Fitness and Probity

(i) Central Bank publishes updated FAQ document

On 14 July 2014, the Central Bank published an updated version of the "Fitness and Probity – Frequently Asked Questions" document ("**FAQs**"). The FAQs were drawn up to address commonly asked questions which have been raised in relation to the operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010.

The document further addresses certain questions that may arise in the context of the amendments made to the Central Bank Reform Act 2010 by the European Union (Single Supervisory Mechanism) Regulations 2014.

The updated FAQs are available via the following link:

Central bank regulation processes and service providers/Documents/FINALUpdated FAQ 20150402.pdf

(ii) Central Bank publishes Individual Questionnaire (IQ) Application Guidance

On 13 July 2015, the Central Bank published the Fitness and Probity Individual Questionnaire Guidance. This document provides guidance for regulated financial service providers and applicant firms in relation to submitting Individual Questionnaires through the Central Bank of Ireland's Online Reporting System ("**ONR**") for individuals who are proposed to hold Pre-Approval Controlled Functions ("**PCFs**").

The full guidance document is available at the following link:

Central bank regulation processes and Documents Individual Questionnaire User Manual.pdf

Central Bank of Ireland

(i) Central Bank publishes results of Themed Inspections on Cyber-Security

The Central Bank has, on 23 September 2015, published the findings of its review of the management of cyber security and related operational risks across investment firms, funds service providers and stockbrokers. The objective of the review was to examine the status of firms' control environments, (including policies and procedures), to detect and prevent cyber-security breaches, as well as to assess board oversight of cyber-security.

While the review focused on the entity types highlighted above, it is also very relevant to, among others, insurance companies. Indeed, while cyber-security is a current theme for the Central Bank, it should, in any case, be a central focus for all firms.

The Central Bank indicated that it is the board's responsibility to ensure that a firm is properly governed and that it has the necessary processes and systems in place to protect the firm and its assets against cyber risk. It stressed that effective corporate governance should be combined with appropriate I.T. and cyber-security risk management to protect against cyber-crime.

The Central Bank has issued a list of best practices that firms should consider with regard to cyber-security risk, which includes the following recommendations:

1) the board should drive a culture of security and resilience throughout the firm;
2) cyber-security should be a standing agenda item for discussion at board meetings;
3) a clear reporting line to the board should be established for incidents; and

4) firms should report any substantial attacks, or successful breaches of their systems to the Central Bank.

A questionnaire has also been issued by the Central Bank, which is designed to assist firms when carrying out an evaluation of their cyber-security capabilities.

The Central Bank has highlighted that, where there is non-compliance with relevant regulatory requirements, it will have regard to its list of best practices when exercising its regulatory and enforcement powers.

The full Dillon Eustace article, which contains some recommendations for firms, along with supporting material, may be accessed using the following link:

Publications Regulatory and Compliance Update on the Central Bank Themed Inspections on Cyber-Security.pdf

(ii) Central Bank speech on regulatory perspectives on financial technologies

On 8 September 2015, a speech given by the Central Bank's Director of Markets Supervision, Gareth Murphy addresses the financial regulation in the era of innovation, technology and disruption. Mr. Murphy outlines that cyber-security is currently a focus for the Central Bank in light of the increased incidence of attacks on personal and corporate IT systems globally.

On the topic of regulatory engagement, Mr. Murphy outlined five core elements that underline the process:

- data collection;
- analysis of data;
- input from political and social stakeholders;
- a legal system; and
- a supervisory model

Mr. Murphy states that each step is sequential and should only be undertaken after a deliberate cost benefit assessment has been conducted.

The regulatory consequences are plainly evident according to Mr. Murphy. New distribution technologies are becoming faster and cheaper, with firms increasingly using mobile devices and applications that directly link to a person's bank account, enabling that person to carry out a wide variety of transactions more efficiently within the existing payments infrastructure.

Mr. Murphy outlines that, in a small number of cases, the Central Bank has seen fraudulent redemption requests being paid by regulated firms operating inadequate identity

verification processes. New forms of identification are currently being explored such as social media profiles and cryptography which uses public and private keys to lock and unlock information and products.

The speech is available in full via the following link:

Central bank press area speeches Pages Gareth Murphy Regulatory Perspectives .aspx

(iii) Central Bank refers Case to Inquiry

On 10 July 2015, the Central Bank has for the first time used special powers to launch an inquiry into the former Irish Nationwide Building Society ("**INBS**") and a number of unnamed managers connected with INBS.

Following an investigation conducted by the Central Bank under its Administrative Sanctions Procedure (pursuant to Part IIIC of the Central Bank Act 1942 (as amended) (the "**Act**"), the Central Bank concluded that it had reasonable grounds to suspect that INBS had committed certain prescribed contraventions and that certain persons who were concerned in the management of INBS at the relevant time participated in the commission of those suspected prescribed contraventions.

The Central Bank's decision can be accessed via the following link:

Central bank press releases pages Central Bank refers INBS Administrative Sanctions Procedure case to Inquiry.aspx

(iv) Central Bank Publication on Funding the Cost of Financial Regulation

On 3 July 2015, the Central Bank and the Department of Finance published a Joint Consultation Paper in relation to "Funding the Cost of Financial Regulation". This paper outlines a number of proposed changes to the current funding structure, and deals with a number of topics including:

- the case for full industry funding;
- the current regulatory cost model;
- the future cost of financial regulation;
- international comparisons;
- domestic comparisons; and
- regulatory landscape for each of the regulatory sectors.

The Consultation Paper suggests that any change to the funding levy arrangements will have due regard to the impact not just on the financial services sector and individual firms, but also to the fiscal impact and any potential impact on consumers.

The most significant change outlined in the Consultation Paper is to move from partial (i.e., 50% with certain exceptions) to full industry funding, so that it aligns the funding levies paid by regulated entities with the costs of their supervision.

The public consultation is open for submissions until 25 September 2015 and submissions received will be published on the Central Bank website.

The consultation paper is available via the following link;

Central bank regulation consultation papers/Documents/CP95 Consultation Paper on Funding the Cost of Financial Regulation CP95 Consultation Paper on Funding the Cost of Financial Regulation.pdf

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

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

On 1 July 2015, ESMA published a set of questions and answers ("**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 (**"MLD4"**) 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

(ii) FATF objectives for July 2015 - June 2016

The Financial Action Task Force ("**FATF**") published a paper (dated 23 June 2015) in which the incoming FATF President, Je-Yoon Shin, outlines the objectives of the Korean Presidency of the FATF for the plenary year July 2015 to June 2016. In particular the paper identifies seven key priorities as follows;

- enhancing FATF and FSRB's efforts in countering terrorist financing;
- addressing the challenges faced by the fourth round of mutual evaluation;
- addressing capacity constraints;
- work prioritisation and strategic allocation of resources;
- mid-term review of FATF Mandate;
- reinforcing the global AML/CFT network;
- closer engagement with the private sector and civil society

The paper is available on the FATF website at the following link:

http://www.fatf-gafi.org/media/fatf/documents/Objectives-for-FATF-XXVII-2015-2016.pdf

(iii) MLD4 published in the Official Journal

On 5 June 2015, the MLD4 (Directive (EU) 2015/849) was published in the Official Journal of the EU. 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.

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.

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.

Data Protection

(i) On Tuesday 6 October, 2015 the Court of Justice of the European Union ("**ECJ**") ruled, in the case of *Schrems* v *Data Protection Commissioner,* that the 'Safe Harbour' arrangements between the United States and the European Commission are invalid.

These arrangements, agreed between the United States and the European Commission, allowed companies based in the U.S. to store personal data about European citizens on U.S. based computer servers without breaching E.U. data protection law (in Ireland; the Data Protection Acts 1988 and 2003). Companies agree to adhere to the Safe Harbour principles, enforced by the U.S. Federal Trade Commission, and as a result are deemed to provide sufficient protection for the personal data. This has allowed Irish subsidiaries of U.S. companies, or even Irish companies which use service providers based in the U.S., transfer personal data to the U.S. without breaching data protection laws.

Please find attached Dillon Eustace article on the recent decision by the ECJ and its possible implications at the following link;

Publications Corporate European Court of Justice Data Protection Ruling.pdf

(ii) European Commission statement on data retention laws

On 16 September 2015, the European Commission published a statement on national data retention laws. The European Commission has indicated that ever since the European Court of Justice annuled the EU Data Retention Directive, the decision of whether or not to introduce national data retention laws is a national decision. The European Commission has stated that it has no intention to reopen old discussions.

In the absence of EU rules, Member States are free to maintain their current date retention systems or set up new ones, providing they comply with basic principles under EU law.

The statement is available via the following link:
http://europa.eu/rapid/press-release_STATEMENT-15-5654_en.htm

(iii) European Protection Data Protection Supervisor issues recommendations on the General Data Protection Regulation

On 27 July 2015, the European Protection Data Protection Supervisor ("**EDPS**") sent his recommendations to the EU co-legislators negotiating the General Data Protection Regulation ("**GDPR**"). The report sets out recommendations which include simplifying the rules on data protection impact assessments and the reporting of data breaches to regulators and affected consumers.

The recommendations include:

- more independent, more authoritative supervision: The EU's data protection authorities should be ready to exercise their roles the moment the GDPR enters into force, with the European Data Protection Board fully operational as soon as the Regulation becomes applicable;

- effective safeguards, not procedures: The EDPS recommends a scalable approach which reduces documentation obligations on controllers into a single policy on how it will comply with the regulation taking into account the risks, with compliance demonstrated transparently, whether for transfers, contracts with processors or breach notifications;

- a better equilibrium between public interest and personal data protection: Those responsible must make the necessary arrangements to prevent personal information being used against the interest of the individual;

- trusting and empowering supervisory authorities: The EDPS recommends allowing supervisory authorities to issue guidance to data controllers and to develop their own internal rules of procedure;

A full list of the recommendations can be accessed via the following link:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2015/15-07-27_GDPR_Recommendations_EN.pdf

(iv) The European Commission publishes letter from the Article 29 Data Protection Working Party (the "letter")

On 13 July 2015, the European Commission published a letter it received from the Article 29 Data Protection Working Party (the "**Working Party**") on the possible delegated acts for the implementation of EU legislation on both MiFID II and MAR.

The letter highlights the concerns of the Working Party relating to data protection rules and principles guaranteed by the Data Protection Directive 95/46/EC and their possible insufficient implementation in the context of MiFID and MAR EU regulations. In particular, it is crucial to examine how principles such as proportionality and necessity, data retention limitation, transparency are taken into account, as well as the future new data protection regulation.

The full letter can be accessed via the following link:

Data_protection_article_29_other_document_letter_from_art29_wp_to_dgfisma_on_coming_delegated_acts_implementing_mifid2vf.pdf

Irish Stock Exchange

(i) Irish Stock Exchange publishes Quarterly Statistics

On 15 July 2015, the Irish Stock Exchange ("**ISE**") published its quarterly statistics for Quarter 2 of 2015. The statistics indicate that the ISE had more than 33,700 securities from over 4,100 issuers in 82 countries around the globe on its markets at the end of June 2015.

The statistics paint a positive picture in that new debt securities for Q2 were 2,088 as compared to 1,691 in Q1. Among the new bonds and debt instruments listed were issuers such as:

- Spanish airline Iberia which raised €125m from a new corporate bond;
- French automotive parts manufacturer Faurecia, a subsidiary of Peugeot which raised €500m; and
- Italian broadcaster Radio Televisione Italiana which listed its first ever bond (€350m) on the ISE's Main Securities Market ("**MSM**").

Trading in Irish shares has increased according to the statistics with over 1.2m equity trades done on the ISE's electronic trading platform in the quarter to June 2015. This increase brings the total for the first six months of 2015 to 2.7m, 20% more than the first half of 2014.

Irish Government bonds and Treasury Bills performed well in the Q2 of this year with turnover reaching €54.9bn, bringing the total for the first half to €160bn, an increase of 28% on the first half of 2014.

The statistics are available in full via the following link:

http://www.ise.ie/Media/News-and-Events/2015/Quarterly-statistics-show-33-700-securities-listed-on-ISE-markets.html

(ii) Irish Stock Exchange has a new approach to annual fees

The ISE has announced that issuers of Collateralized Loan Obligations, collateralized Debt Obligations and Collateralized Bond Obligations ("**CLO/CDO/CBO**") securities will now be required to choose one of the following two options:

- pay a capped upfront payment of €10,000 in respect of annual fees; or
- include wording within the offering document which provides for designation of ISE annual listing fees in the Priority of Payments section.

ISE has clarified that the annual fee amount remains unchanged; it is only the manner in which such fees are collected that is changing.

The ISE has confirmed that this requirement will be applicable to all new CDO / CLO / CBO submissions to the Main Securities Market and the Global Exchange Market received on or after 1 September 2015.

For more information please visit the ISE website via the following link:

http://www.ise.ie/

(iii) ISE attracts new investment managers

The ISE Fundhub, set up in 2014, has had considerable success in attracting Investment Managers of ISE-listed funds to sign up to the site. As of September 2015, there are over 300 professional investors and 37 investment managers signed up, including E.I Sturdza and EFG Asset Management.

ISE Fundhub is a portal for investment managers and professional investors that provides information on listed funds and allows investment managers to post information on the investment management company and upload documents such as the Prospectus/Supplements, KIIDS, reports and for their listed funds. The site automatically performs analytics and peer performance on funds which have signed up. This is based on NAV history and on-going pricing, which is automatically uploaded to the FundHub when a NAV is reported to the ISE.

Companies Act 2014

As advised in our Quarter 2 update, 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 provides for an 18 month transition period that commenced on 1 June 2015. All existing companies limited by shares that have not converted prior to 31 August 2016 will be treated as Designated Activity Companies ("**DACs**"). From 1 December 2016, all existing private companies limited by shares that have not converted to a Company Limited by Shares ("**LTD**") or re-registered as a DAC, will automatically be converted to an LTD.

Please see our website http://www.dilloneustace.ie/Publications/Regulatory-and-Compliance for various Dillon Eustace updates on the key elements of CA 2014.

Consumer Protection (Regulation of Credit Servicing Firms) Act 2015

On 8 July 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (the "**Act**") came in to effect. The Act aims to ensure that borrowers have the benefit of the regulatory safeguards that they enjoyed prior to the sale of their loans to unregulated entities, including pursuant to the Central Bank Code of Conduct on Mortgage Arrears, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code (together the "**Codes**") as well as the right to make complaints to the Financial Services Ombudsman (the "**FSO**"). It is proposed that the legislative changes envisaged by the Bill will be brought about by way of amendment to the Central Bank Acts 1942 – 2014.

The Act introduces a new type of regulated entity called a "Credit Servicing firm". Credit servicing is defined broadly in the Bill and includes the following activities:-

- notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,

- taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower.

Entities falling within the scope of the new credit servicing regime will be required to apply for authorisation from the Central Bank under Section 30 of the Central Bank Act 1997 (as amended), and will be regulated by them. The Consultation Paper, issued by the Central Bank on 14 July 2015, covers its proposed Authorisation Requirements and Standards that applicants must satisfy. The consultation period closed on 30 September 2015.

For more information please see article on Dillon Eustace's website:

Banking Capital Markets The Consumer Protection (RegulationofCreditServicingFirms) Bill 2015.pdf

Regulation of Lobbying Act 2015

The Regulation of Lobbying Act 2015 (the "**Act**"), which came into effect on 1 September 2015, applies to a diverse range of individuals who would not be generally regarded as lobbyists.

The Act obliges those engaged in lobbying activities to register on the online lobbying register (the "**Register**"), which is maintained by the Standards in Public Office Commission (the "**Standards Commission**"), and to provide certain information in respect of those activities for inclusion in the Register. The Act is intended to ensure that the influence of lobbying in public-decision making practices is more transparent.

Under the Act, a person will be considered to be a lobbyist where they make a "relevant communication". A communication will relate to a "relevant matter" if it relates to the:

- initiation, development or modification of any public policy or of any public programme;
- preparation or amendment of an enactment; and
- award of any grant, loan or other financial support, contract or other agreement or of any licence or other authorisation involving public funds.

The Act further provides that a person is deemed to be carrying on lobbying activities if they fall within certain categories. An outline of these categories is provided below:

- persons in the course of their business being paid to make, manage or direct the making of a relevant communication on behalf of a client who has more than ten full time employees or is a representative body or an advocacy body which has at least one full time employee;
- an employer, or their agent or employee, with more than ten employees where the communications are made on behalf of the employer;
- a representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body;
- an advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues; and
- any person communicating about the development or rezoning of land.

The Standards Commission will be responsible for the regulation of lobbying. There is a positive obligation on lobbyists to register under the Act and to provide returns to the Standards Commission every four months. The first returns are due to be submitted to the Register by 21 January 2016, i.e., registration is mandatory from this date if you have engaged in lobbying during the period 1 September 2015 to 31 December 2015.

The Act provides for various contraventions, which include making a late return, failing to make a return, or making a false or misleading return. The Standards Commission can carry out investigations of alleged contraventions and have extensive powers to demand information, explanations and documents. It also has powers of search and seizure.

For more information on the Act, please visit Dillon Eustace's website:

Publications Regulatory and Compliance Regulation of Lobbying Act 2015.pdf

Irish Taxation Update

(i) Common Reporting Standard ("CRS") Update

As noted in our prior update, the effective start date of CRS in Ireland is currently set at 1 January 2016. Relevant due diligence procedures are required to be in place for new accounts opened from this date.

For the purposes of on-boarding these new accounts (i.e. new accounts opened from 1 January 2016), it will generally be necessary to obtain self-certification forms (which is very similar to the due diligence presently required for FATCA). For these purposes, the Irish Fund's CRS Committee is currently in the process of drafting template self-certification forms. It is intended that these templates will combine the required self-certifications for both FATCA and CRS (thus, reducing the requirement for new accountholders to complete separate self-certifications for both FATCA and CRS).

Notwithstanding the above, please note that the CRS has yet to be fully implemented into Irish law. Irish tax legislation was introduced in the Finance Act 2014 that allowed for the making of regulations to introduce CRS, however, these regulations are still in draft format. It is envisaged that they will be finalised in the very near future, and that any related data protection issues will be resolved at this point.

Dillon Eustace
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