

Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 July 2017 – 30 September 2017

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

▣ Table of Contents

MiFID II - Irish Developments	2
MiFID II - European Developments.....	6
Investment Limited Partnership	15
Packaged Retail Insurance-based Investment Products (“PRIIPs”).....	16
European Markets Infrastructure Regulation (“EMIR”)	18
Proposed Regulation on CCP Recovery and Resolution	20
Benchmark Regulation.....	21
Short Selling.....	23
European Securities and Markets Authority (“ESMA”)	23
International Organization of Securities Commissions (“IOSCO”).....	24
Capital Markets Union (“CMU”).....	25
Market Abuse Regulation (“MAR”).....	28
Capital Requirements Directive IV / CRR	29
Payment Services Directive 2 (“PSD2”).....	33
Prospectus Directive	34
Transparency Directive	35
Consumer Law Directives	35
Credit Rating Agencies (“CRAs”).....	36
Central Bank of Ireland	36
Minimum Competency Code and Minimum Competency Regulations	37
Financial Services and Pensions Ombudsman	38
Anti-Money Laundering (“AML”)/Counter-Terrorist Financing (“CTF”)	38
Data Protection	41
Non-Financial Reporting	44

MiFID II - Irish Developments

(i) Department of Finance issues a MiFID II Feedback Statement

On 14 July 2017, the Department of Finance in Ireland published a MiFID II Feedback Statement (the “**MiFID II Feedback Statement**”) on its 2016 public consultation on national discretions under Directive 2014/65/EU (“**MiFID II Directive**”) and Regulation (EU) No 600/2014 (“**MiFIR**”) (together “**MiFID II**”). The consultation was launched in September 2016 and dealt with aspects such as the exercising of optional exemptions, interaction with the Investor Intermediaries Act 1995 (as amended) (the “**IIA**”) and also the treatment of third country firms post MiFID II.

Article 39 of MiFID II contains an optional national discretion available to Member States which allows Member States to opt to elect to exempt certain firms (namely, third country firms engaged in the provision of wholesale investment services (i.e. services to *per se* professional clients and eligible counterparties) from the requirements of MiFID II.

In MiFID II Feedback Statement, the Department of Finance indicated that it is proposed that the MiFID II Irish implementing legislation will maintain the requirement for third country firms to establish a branch where the firm intends to provide investment services to retail clients and “opt-up” professional clients. The “*safe-harbour*” exemption will continue to be available to investment firms providing services to *per se* professional clients and eligible counterparties, subject to a number of new conditions.

Article 3(1) (a) – (c) of MiFID II permits Member States to elect to exempt firms carrying out certain limited activities (each an “**Exempt Firm**”) from the scope of MiFID II. This reflects the position under MiFID Directive 2004/39/EU (“**MiFID I**”). However, MiFID II contains the added proviso that such Exempt Firms must be subject to requirements which are “at least analogous” to the MiFID II requirements. In the MiFID II Feedback Statement, the Department of Finance indicated that this exemption will be contained in the MiFID II Irish implementing legislation. In order to ensure that those Exempt Firms will be subject to Irish legislation which is “at least analogous” to the obligations under MiFID II, the Department of Finance indicated that the IIA and the Central Bank’s Consumer Protection Code 2012 will be required to be amended.

The MiFID II Feedback Statement sets out details on the proposed amendments to the IIA and the Central Bank’s Consumer Protection Code 2012.

The Dillon Eustace publication entitled “MiFID II; DOF Feedback Statement Third Country Firm Safe Harbour” can be accessed [here](#).

A copy of the MiFID II Feedback Statement is available [here](#).

(ii) Transposition of MiFID II into Irish law

The MiFID II Directive, along with MiFIR, collectively known as “**MiFID II**” will enter into force from 3 January 2018.

In order to transpose MiFID II into Irish law, the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) were signed into Irish law on 10 August 2017 (the “**MiFID II Irish Regulations 2017**”). The MiFID II Irish Regulations 2017 amends the Central Bank Act 1942 as well as the Investment Intermediaries Act 1995 (as amended). Changes to the Central Bank’s Consumer Protection Code 2012 and to the client asset regulations contained in the Central Bank Investment Firm Regulations 2017 are also required as part of the transposition of MiFID II.

A copy of the MiFID II Irish Regulations 2017 are available [here](#).

(iii) Central Bank publishes Consultation Paper on the Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II

On 16 July 2017, the Central Bank published a Consultation Paper on the Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II - Consultation Paper 111 (“**CP 111**”).

CP 111 consults on a number of proposed changes to the Central Bank Investment Firms Regulations (S.I. No. 60 of 2017) as follows:

- ▣ MiFID II necessitated changes to the Client Asset Regulations 2015 (“**CAR**”);
- ▣ Integration of CAR into the Central Bank Investment Firms Regulations in line with CP 97;
- ▣ Integration of the Investor Money Regulations (S.I. No. 105 of 2015) as amended in 2016 (“**IMR**”) into the Central Bank Investment Firms Regulations;
- ▣ Integration of the Central Bank rules in relation to the capital requirements applied to market operators as set out in the Central Bank’s feedback statement on CP 101; and
- ▣ Some other consequential changes to the existing Central Bank Investment Firms Regulations to address matters arising since the first edition of the Central Bank Investment Firms Regulations became operational and certain changes arising out of MiFID II (including certain technical amendments in relation to the regulatory requirements applied to Fund Administrators).

In respect of the changes to CAR, the current Irish CAR regime will be maintained, with some amendments to address the fact that the MiFID 2 level 2 rules are detailed and to some extent overlap with CAR. It is expected that the proposed changes to the Central Bank Investment Firms Regulations will be in place by 3 January 2018.

The deadline for response to the Consultation Paper was 27 September 2017.

A copy of the Consultation Paper is available [here](#).

(iv) Central Bank publishes the MiFID II amendments to the Consumer Protection Code 2012

On 12 August, 2017, the Central Bank published an Addendum to the Consumer Protection Code 2012 (the “**Code**”). The purpose of the Addendum is to implement the amendments to the Code arising from the transposition of the MiFID II Directive into Irish law, as envisaged in the MiFID II Feedback Statement.

The following parts of the 2012 Code are amended by the Addendum:

- ▣ Chapter 4 – Provision of information;
- ▣ Chapter 9 – Advertising; and
- ▣ Chapter 12 – Definitions.

In addition, the Addendum inserts a new Chapter 14.

The Addendum is stated to be effective from 3 January 2018, the date of application of 2017 Irish MiFID II Regulations.

A copy of the Addendum is available [here](#).

(v) Irish Funds publishes a Q&A document on MiFID II

On 6 September 2017, Irish Funds published a Q&A document on MiFID II which addresses the implications for the Irish funds industry. Questions and answers are included on:

- ▣ General scoping matters;
- ▣ Inducements, payments for research and disclosures of costs;
- ▣ Product governance; and
- ▣ Investment Managers/Advisers of AIFs/UCITS.

The Q&A also sets out action points for UCITS Management Companies (“**ManCos**”) and AIFMs to consider.

MiFID II does not apply directly to UCITS ManCos and AIFMs which are not authorised to carry out MiFID investment services. However, UCITS ManCos and AIFMs typically contract with service providers who provide MiFID investment services in respect of Irish UCITS and

AIFs as part of a delegation model framework. The Q&A has been prepared by the Irish Funds MiFID II Working Group to assist these UCITS ManCos and AIFMs with regard to matters relating to the implementation of MiFID II. As industry progresses with the implementation of MiFID II by 3 January 2018, further Q&As may be published in order to address issues arising. The Irish Funds MiFID II Working Group continues to monitor and engage on MiFID II implementation.

A copy of the Q&A is available to members of Irish Funds through the association's website portal.

(vi) Central Bank testing for MiFIR Transaction Reporting

The Central Bank's Online Reporting System ('**ONR**') testing for MiFIR transaction reporting is currently underway. The testing will allow certain participating firms and the Central Bank to test the MiFIR Transaction Reports submission process and ensure that potential issues are identified and rectified in advance of the go live date of 3 January 2018. The testing involves uploading XML ISO 20022 compliant files to Test ONR (i.e. a test version of ONR).

(vii) Central Bank issues industry letter on the review of MiFID suitability requirements

On 29 August 2017, the Central Bank issued a letter to the industry regarding a suitability themed review of MiFID firms compliant with ESMA's "Guidelines on certain aspects of the MiFID suitability requirements" (the "**Guidelines**"). The Guidelines clarify the application of the suitability requirements outlined in Regulations 76(3) and 94 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) (the "**Irish MiFID I Regulations**").

A copy of the letter to industry can be found [here](#).

A copy of the Guidelines can be found [here](#).

(viii) Central Bank confirms compliance with ESMA Guidelines on the Calibration of Circuit Breakers and Publication of Trading Halts

On 14 September 2017, the Central Bank notified industry participants that it confirms it complies with ESMA's Guidelines on the Calibration of Circuit Breakers and Publication of Trading Halts under MiFID II (the "**Guidelines**").

The Guidelines provide guidance on:

- ▣ The calibration of trading halts;
- ▣ The dissemination of information regarding the activation of a trading halt; and
- ▣ The procedure and format to submit reports on trading halt parameters from national competent authorities ("**NCA**s") to ESMA.

The Guidelines will apply from 3 January 2018 and can be found [here](#).

MiFID II - European Developments

(i) ESMA publishes opinion on MiFID II transitional transparency calculations

On 3 July 2017, ESMA published an opinion providing interim transparency calculations for non-equity instruments in relation to the implementation of MiFID II and MiFIR.

MiFID II includes provisions which allow NCAs to waive the obligation for market operators and investment firms, which operate a trading venue, to make public pre-trade information for non-equity instruments excluding bonds. NCAs are permitted under MiFID II to permit such waivers if instruments do not have a liquid market or if an order or transaction exceeds a certain size.

The ESMA opinion sets out information on the liquidity classification of financial instruments and the sizes regarded as large in scale compared to normal market size and the size specific to the instrument. ESMA has also published an accompanying FAQs to assist firms.

A copy of the opinion is available [here](#).

A copy of the FAQs is available [here](#).

(ii) ESMA publishes corrected opinion on calculating market size of ancillary activity under MiFID II

On 6 July 2017, ESMA published a corrected version of its opinion on calculating the market size of ancillary activity under MiFID II (as originally published in June 2017). The opinion was revised to correct an error in the table entitled "H2 2016 Estimates" on page 6.

A copy of the corrected opinion is available [here](#).

(iii) EBA launches supplementary data collection on revision of investment firm prudential framework

On 6 July 2017, the EBA announced the launch of a supplementary data collection aimed at supporting the response to the European Commission's Call for Advice on the new prudential framework for investment firms. The data collection follows on from the EBA's proposals for a revised prudential framework for investment firms set out in a November 2016 discussion paper.

For the purpose of this data collection, the EBA published templates and instructions which are addressed to MiFID investment firms, including those that are expected to fall

under the scope of MiFID II. The templates were required to be submitted to the respective NCAs by 3 August 2017.

A copy of the EBA's announcement can be accessed [here](#).

(iv) ESMA publishes further updates to its Q&As on MiFID II / MiFIR

During the period 1 July 2017 to 30 September 2017, ESMA published updated versions of the following MiFID II / MiFIR Q&As:

- On 7 July 2017, an updated Q&A on market structures topics. The revisions relate to multilateral trading systems, direct electronic access, algorithmic trading and access to CCPs and trading venues.

A further updated Q&A on market structures topics was issued on 13 September 2017. In this version, the revisions relate to the timing and procedure of notification for temporary opt-out and matters concerning exemptions under Article 36(5) and Article 54(2) of MiFIR. A copy of the updated Q&A on market structures topics can be found [here](#).

- On 7 July 2017, an updated Q&A on MiFID II Directive and MiFIR commodity derivatives topics. The revisions relate to commodity derivative position limits and position reporting. A copy of the updated Q&A can be found [here](#).
- On 7 July 2017, an updated Q&A on MiFIR data reporting. The revisions relate to reporting details and data fields. A copy of the updated Q&A can be found [here](#).
- On 10 July 2017, an updated Q&A on investor protection. The revisions relate to best execution in the context of securities financing transactions and the recording of telephone conversations and electronic communications. A copy of the updated Q&A can be found [here](#)

(v) Update as regards to RTS and ITS in the context of MiFID II / MiFIR

The following regulatory technical standards (“**RTS**”) and implementing technical standards (“**ITS**”) in the context of MiFID II / MiFIR entered into force the period in question:

- Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down ITS with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State entered into force on 3 July 2017. A copy of the Commission Implementing Regulation can be found [here](#).
- Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down ITS with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information

between competent authorities in accordance with MiFID II entered into force on 2 July 2017. A copy of the Commission Implementing Regulation can be found [here](#).

- ▣ Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down ITS with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with MiFID II entered into force on 2 July 2017. A copy of the Commission Implementing Regulation can be found [here](#).
- ▣ Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down ITS with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments under MiFID II entered into force on 5 July 2017. A copy of the Commission Implementing Regulation can be found [here](#).
- ▣ Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down ITS with regard to the format of position reports by investment firms and market operators entered into force on 11 July 2017. A copy of the Commission Implementing Regulation can be found [here](#).
- ▣ Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down ITS with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications under MiFID II entered into force on 13 July 2017. A copy of the Commission Implementing Regulation (can be found [here](#).
- ▣ Commission Delegated Regulation (EU) 2017/1018 of 29 June 2017 supplementing MiFID II with regard to RTS specifying information to be notified by investment firms, market operators and credit institutions entered into force on 7 July 2017. A copy of the Commission Delegated Regulation can be found [here](#).

The following RTS and ITS in the context of MiFID II / MiFIR were adopted by the European Commission during the period in question:

- ▣ On 11 July 2017, the European Commission adopted an Implementing Regulation laying down ITS with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities relating to the notification of a proposed acquisition of a qualifying holding in an investment firm. A copy of the Implementing Regulation can be found [here](#).
- ▣ On 11 July 2017, the European Commission adopted a Delegated Regulation with regard to RTS for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm. A copy of the Delegated Regulation can be found [here](#).

- ▣ On 14 August 2017, the European Commission adopted a Delegated Regulation with regard to the treatment of package orders. A copy of the Delegated Regulation can be found [here](#).
- ▣ On 28 August 2017, the European Commission adopted a Delegated Regulation amending Delegated Regulation (EU) 2017/565 in relation to the specification of the definition of systematic internalisers. A copy of the Delegated Regulation can be found [here](#).
- ▣ On 26 September 2017, the European Commission adopted the Delegated Regulation that amends Delegated Regulation (EU) 2017/571 which supplements the MiFID II on RTS specifying the scope of the consolidated tape for non-equity financial instruments under MiFID II (such as, bonds, structured finance products, emission allowances and derivatives). A copy of the Delegated Regulation can be found [here](#).

The next step will be for the Council of the EU and the European Parliament to consider each Regulation. If neither of them objects, each Regulation will enter into force 20 days after its publication in the Official Journal of the EU and will apply from 3 January 2018.

(vi) ESMA published a consultation paper on guidelines on MiFID II suitability requirements

On 13 July 2017, ESMA published a consultation paper on guidelines on certain aspects of the suitability requirements under MiFID II. The new guidelines will replace the existing guidelines published by ESMA in July 2012. The consultation closes on 13 October 2017.

A copy of the consultation paper can be found [here](#).

(vii) ESMA issues a common procedure and template for NCAs to report circuit breakers' parameters

On 17 July 2017, ESMA published a document that sets out a common procedure and template for NCAs to report to it the parameters to halt or constrain trading used by trading venues under their jurisdiction (the “**ESMA Common Procedure**”).

A copy of the common procedure can be found [here](#).

(viii) ESMA publishes updates on technical reporting instructions on transaction reporting under MiFIR

On 20 July 2017, ESMA published an updated version of its technical reporting instructions, dated 17 July 2017, relating to transaction reporting under MiFIR. It is intended that the reporting instructions will cover the elements of the interface that should be built between NCAs and market participants in their member states. In particular, the reporting instructions provide information on:

- ▣ The overall process for transaction data reporting;
- ▣ The common technical format for data submission; and
- ▣ The common set of data quality controls to be applied to each transaction report.

The amendments that have been made to the reporting instructions are set out in a log of changes.

A copy of the updated technical reporting instructions is available [here](#).

A copy of the log of change is available [here](#).

(ix) EFAMA publishes a European MiFID template which will assist AIFM and UCITS ManCo clients

On 7 August 2017, EFAMA endorsed and published a MiFID information exchange template which was designed by a European Working Group consisting of European asset managers, banks, insurers and distributors.

The template provides a functional description of the minimum set of data (defining a product's target market and disclosing its costs and charges) for product manufacturers, such as asset managers, to provide to their advisers and/or distributors to help them fulfil their regulatory requirements imposed by MiFID II, which comes into effect on 3 January, 2018.

MiFID II requires all advisers and distributors to provide clients with a pre-sale costs and charges projection and an annual, personalised costs and charges report afterwards. In addition, product manufacturers must identify the target market for whom the fund is appropriate and distributors will subsequently have to report back to show that only those in the target market have invested.

The template will be of assistance to AIFM and UCITS ManCos clients who, despite not being directly subject to MiFID II requirements, will work with their distributors to provide the relevant data outlined in the template to allow those distributors to meet their reporting obligations under MiFID II.

A copy of the EFMA template can be found [here](#).

(x) ESMA publishes updated guidelines on transaction reporting under MiFID II and MiFIR

On 8 August 2017, ESMA published an updated version of its guidelines on transaction reporting, order record keeping and clock synchronisation under the MiFID II.

A copy of the updated guidelines is available [here](#).

(xi) ESMA publishes its first three opinions on commodity position limits under MiFID/ MiFIR

On 10 August 2017, ESMA published its first three opinions on position limits regarding commodity derivatives. Under MiFID II / MiFIR, NCAs have to set position limits for commodity derivatives and notify ESMA of the specific position limits they plan to introduce for liquid contracts. ESMA agreed with the French Regulator's (Autorité des Marchés Financiers) proposed position limits for rapeseed, corn and milling wheat.

A copy of the opinion position on corn can be found [here](#).

A copy of the opinion position on rapeseed can be found [here](#).

A copy of the opinion position on milling wheat can be found [here](#).

(xii) ESMA publishes responses to its consultation on RTS relating to trading obligations for derivatives under MiFIR

On 10 August 2017, ESMA published the responses which it received to its consultation on RTS specifying the derivatives that should be subject to trading obligations for derivatives under MiFIR. The responses include responses from Alternative Investment Management Association ("AIMA"), the Securities Industry and Financial Markets Association's Asset Management Group, ISDA and various banks, insurance companies and representative groups.

A copy of the responses can be found [here](#).

(xiii) European Commission publishes report on temporary exclusion of exchange-traded derivatives from scope of Articles 35 and 36 of MiFIR

On 11 September 2016, the European Commission published a report to the European Parliament and the Council which provides an assessment on the need to temporarily exclude exchange-traded derivatives ("ETDs") from the scope of Articles 35 and 36 of MiFIR (Regulation 600/2014)("MiFIR"). The report identifies a number of potential risks of an open and non-discriminatory access to ETDs under MiFIR but having examined them the Commission considers that the current regulatory framework in MiFIR and EMIR appropriately address them. On this basis, the report concluded that it is not necessary to temporarily exclude ETDs from the scope of Articles 35 and 36 of MiFIR.

A copy of the report can be found [here](#).

(xiv) ESMA publishes updated FAQs on transitional transparency calculations under MiFID II

On 11 September 2017, ESMA published an update of its FAQs on transitional transparency calculations for non-equity instruments under MiFID II. In July, some trading

venues notified ESMA that there were problems in the submitted data. The problems affected the calculations for credit derivatives and equity derivatives. ESMA has corrected and recalculated the transitional transparency calculations for both asset classes.

A copy of the updated FAQ's can be found [here](#).

A copy of the accompanying press release explaining the problem with the submitted data is available [here](#).

(xv) FIA co-publish due diligence questionnaire for MiFID II firms providing direct electronic access to clients

On 11 September 2017, the Futures Industry Association in co-operation with the Association for Financial Markets in Europe, the Alternative Investment Management Association and the Managed Funds Association have co-published a due diligence questionnaire for MiFID II investment firms providing direct electronic access (“DEA”) to their clients. The purpose of the template due diligence questionnaire is to allow the DEA provider and client utilise a standardised set of checks. While the template allows DEA providers to use a common set of questions for their clients, they have the flexibility to omit or add questions appropriate to the services that they provide.

A copy of the due diligence questionnaire can be found [here](#).

(xvi) ESMA publishes procedure for exemption from MiFIR access provisions for trading venues

On 15 September 2017, ESMA published a procedure which sets out the process for exemptions for trading venues from the MiFIR requirements which require them to provide central counterparties (“CCP’s”) access to trade feeds.

Should a trading venue fall below a specified trading threshold, it may, apply for an exemption which initially lasts for a period of thirty months from 3 January 2018. However, the trading venue must notify ESMA and its NCA that it seeks exemption from Article 36(1) of MiFIR. The exemption may be rolled over provided that the trading venue remains below the trading threshold.

A copy of the procedure can be found [here](#).

(xvii) AFME publishes report on MiFIR post-trade reporting requirements

On 21 September 2017, the Association for Financial Markets in Europe (“AFME”) published a report explaining the post-trade reporting requirements under Articles 6, 10, 20, and 21 of the MiFIR.

The report is primarily for banks and investors to help clarify which party has reporting obligations and also highlights the key challenges and practical implementation for

investment firms to consider such as; the data that must be reported, when and where the data is to be reported, reporting scenarios, challenges that face market participants when implementing the reporting solution and an explanation of key terms relating to the MiFIR post-trade reporting requirements. The new requirements will come into force on 3 January 2018.

A copy of the report can be found [here](#).

(xviii) ESMA and national competent authorities agree updated work plan on MiFID II pre-trade transparency waivers and position limits

On 28 September 2017, ESMA published a statement announcing that it has agreed with NCAs on an updated work plan for the opinions on pre-trade transparency waivers and position limits that ESMA is required to issue under MiFID II. The updated plan is set out as:

▣ **Opinions on pre-trade transparency waivers**

ESMA intends to issue the final opinions on equity waivers by the end of 2017.

As regards non-equity waivers, ESMA is unlikely to be in a position to issue opinions on a majority of waiver notifications by 1 January 2018. To help NCAs ensuring compliance with non-equity waiver notifications, ESMA will publish Q&As addressing the key issues in the non-equity waiver notifications.

▣ **Opinions on position limits for commodity derivatives**

ESMA and the NCAs have agreed that it is not possible to finalise and publish all opinions on position limits for liquid commodity derivative contracts by the end of 2017. To alleviate this problem, the NCAs will publish limits ahead of ESMA's opinions. After ESMA has issued the opinions the NCAs will modify the position limits in accordance with the opinion, or the NCAs will provide a justification as to why no modification is necessary. Market participants will be given an adequate lead-time to adapt to the revised trading environment.

A copy of the published a statement can be found [here](#).

(xix) EBA opinion on design of a new prudential framework for investment firms

On 29 September 2017, the EBA published an opinion in response to the European Commission's call for advice on the prudential requirements applicable to MiFID investment firms under the prudential regime of CRD IV (the Capital Requirements Regulation (Regulation 575/2013) ("CRR").

The EBA's opinion makes a number of recommendations, including those relating to:

- ▣ Design and calibration of capital and liquidity requirements;

- ▣ Consolidated supervision;
- ▣ Reporting requirements;
- ▣ The suitability of the proposed framework for commodity derivatives firms; and
- ▣ The need for macroprudential tools.

The EBA also made a recommendation on the applicability of the CRD IV remuneration requirements and corporate governance rules on investment firms and suggests introducing simple prudential requirements for small investment firms that provide limited services or activities. A copy of the opinion can be found [here](#).

The EBA has also published an annex to the opinion, which includes background information and rationale for each of its recommendations with an impact assessment. The annex can be found [here](#).

(xx) ESMA comments on MiFID II implementation and Brexit

On 29 September 2017, Reuters.com published an article which had comments on the implementation of MiFID II and Brexit by Stephen Maijor, the ESMA Chair.

Regarding Brexit, Mr Maijor observed that MiFID II had been designed on the basis that the UK would be within in the EU and believes that the exit of the UK from the single market will affect some elements of MiFID. However, this will depend on the outcome of the Brexit negotiations. According to Mr Maijor, ESMA has begun assessing the impact of a possible "hard" Brexit on the stability of the EU's securities market. Such as credit rating agencies ("CRAs") and trade repositories and to protect EU investors in UK-based mutual funds

The article also reports that the FCA has said that it would not punish firms for "*not meeting all requirements straight away where there is evidence they have taken sufficient steps to meet the new obligations by the start date*". Similarly, Mr. Maijor commented that it is likely that regulators would look differently on a violation by a firm on 4 January 2018 than from a violation at a later date.

A copy of the Reuters article can be found [here](#).

(xxi) ESMA publishes final report on the RTS on MiFIR trading obligation for derivatives

On 29 September 2017, ESMA published its final report (dated 28 September 2017) on the RTS on MiFIR trading obligation for derivatives.

The final report sets out ESMA's approach for interest rate swap ("IRS") classes and credit default swap ("CDS") classes that should be subject to the trading obligation and the date

from which the obligation should apply. The draft RTS has been set out in an annex to the final report.

MiFIR requires the trading obligation to be applied to classes of derivatives that are sufficiently liquid and that are available for trading on at least one trading venue. ESMA has decided to make the following fixed-to-float IRS and CDS indices subject to the trading obligation:

- ▣ Fixed-to-float interest rate swaps denominated in EUR;
- ▣ Fixed-to-float interest rate swaps denominated in USD;
- ▣ Fixed-to-float interest rate swaps denominated in GBP; and
- ▣ Index CDS – iTraxx Europe Main and iTraxx Europe Crossover.

A press release from ESMA states that it submitted the draft RTS to the Commission for its endorsement on 28 September 2018 where the Commission has three months to decide whether to endorse the draft RTS.

A copy of the press release can be found [here](#).

A copy of the final report can be found [here](#).

(xxii) ESMA publishes guidelines on suitability assessment for management bodies of market operators and DRSPs under MiFID II

On 29 September 2017, ESMA published guidelines (dated 28 September 2017) on the management bodies of trading venue market operators and data reporting service providers (“DRSPs”). The guidelines are accompanied by a final report (also dated 28 September 2017).

The guidelines clarify how information is to be recorded by market operators and DRSPs to make it available to competent authorities for the exercise of their supervisory duties.

A copy of the final report can be found [here](#).

A copy of the guidelines can be found [here](#).

Investment Limited Partnership

(i) Reform of Irish Legislative Framework for Investment Limited Partnerships

On 18 July 2017, the Minister for Finance and Public Expenditure and Reform in Ireland announced that the Government has approved the legal drafting of the Investment Limited

Partnership (Amendment) Bill, 2017. The aim of the Bill is to modernise the current investment limited partnership legislation in Ireland.

A copy of the press release is available [here](#).

Packaged Retail Insurance-based Investment Products (“PRIIPs”)

(i) **PRIIPs Regulation and PRIIPs Delegated Regulation - implications for collective investment schemes**

Regulation (EU) No 1286/2014 of the European Parliament and of the Council (the “**PRIIPs Regulation**”) takes effect from 1 January 2018. The objective of the PRIIPs Regulation is to improve the transparency of certain products manufactured by the financial services industry which are offered to retail investors. In brief, the PRIIPs Regulation introduces an obligation on the manufacturers of packaged retail and insurance-based investment products (“**PRIIPs**”) to produce a key information document (“**KID**”) for retail investors so that they can understand and compare the key features and risks of a PRIIP.

European Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 (the “**PRIIPs Delegated Regulation**”) supplements the PRIIPs Regulation by laying down the regulatory technical standards with regard to the presentation, content, review and revision of such a KID and the conditions for fulfilling the requirement to provide such a KID.

The PRIIPs Regulation makes it clear that the obligations to prepare a KID arise where the relevant PRIIP is offered or sold to any “retail investor”. Therefore, the PRIIPs Regulation has implications for those collective investment schemes which offer or sell shares/units to “retail investors”. A “retail investor” has the meaning prescribed to “retail client” within the meaning of Annex II of Directive 2014/65/EU - Markets in Financial Instruments Directive II) (“**MiFID II**”), being “a client who is not a professional client”.

A collective investment scheme (both UCITS and AIFs) may qualify as a PRIIP and therefore be subject to the provisions of the PRIIPs Regulation if it is the case that it is offered or sold to a “retail investor” within the EEA. UCITS are exempt from the PRIIPs KID regime until 31 December 2019.

It should be noted that the QIAIF regime permits investors other than those who constitute “professional clients” within the meaning of MiFID II to acquire shares in the QIAIF provided that they either: (i) receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that they have the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF; or (ii) certify that they are an informed investor by confirming in writing that they have such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment or confirming in writing to the QIAIF that their business involves the management, acquisition or disposal of property of the same kind as the property of the QIAIF.

If it is the case that a QIAIF will continue to be offered or sold to such categories of investors within the EEA after 1 January 2018, this may trigger a requirement to prepare a KID in accordance with the provisions of the PRIIPs Regulation. A retail investor AIF will also be required to prepare a KID if it is the case that it is offered or sold to investors other than “professional clients” within the meaning of MiFID II.

If it is the case that the collective investment scheme is only offered within the EEA to “professional clients” within the meaning of MiFID II, it may be advisable for the collective investment scheme to make certain amendments to its fund documentation to reflect this position.

(ii) ESAs publishes Q&A guidance on PRIIPs KID during July and August 2017

On 4 July 2017, the European Supervisory Authorities (“**ESAs**”) published a Q&A guidance document relating to the KID requirements for PRIIPs as laid down in the PRIIPs Delegated Regulation. The Q&A includes answers to questions linked with the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information.

On 18 August 2017, the ESAs published an updated version of Q&A guidance document which include additional questions concerning KID requirements for PRIIPs. It includes a new section covering “general topics” and includes a Q&A on the “categorisation of a retail investor” and new Q&As on “market risk assessment, methodology for assessing credit risk, summary risk indicator and presentation of costs”. In addition, the ESAs published certain diagrams explaining the risk and reward calculations required to be included in a KID.

A copy of the latest Q&A is available for download [here](#).

(iii) European Commission adopts guidelines on the application of PRIIPS Regulation

On 4 July 2017, the European Commission adopted guidelines on the application of the PRIIPs Regulation for PRIIPS.

The guidelines provide clarification on some highly discussed topics such as the territorial scope, existing commitments, multi-option PRIIPs, distribution and KIDs “on demand”.

A copy of the guidelines is available for download [here](#).

(iv) ESAs publish advice on PRIIPs which target specific environmental or social objectives

On 28 July 2017, the ESAs published final technical advice to the European Commission specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives and sets out guidelines on how to ensure that these objectives are consistently adhered to. The technical advice followed an earlier consultation

launched by the ESAs on 10 February 2017 in response to a mandate from the European Commission. The consultation closed on 24 March 2017.

The final technical advice can be found [here](#).

European Markets Infrastructure Regulation (“EMIR”)

(i) **ESMA publishes a final report on technical standards on data to be made publicly available by trade repositories under EMIR**

On 11 July 2017, ESMA published a final report which summarises the feedback ESMA received to its December 2016 consultation on proposed changes to the Commission Delegated Regulation (EU) 151/2013 setting out the regulatory technical standards (“RTS”) on data to be made public by trade repositories (“TRs”) under EU Regulation 648/2012 (“EMIR”).

In the final report, ESMA outlines its proposed amendments to Commission Delegated Regulation (EU) 151/2013 and the RTS therein. The European Commission has three months to decide to endorse the proposed amendments submitted by ESMA.

A copy of the final report is available [here](#).

(ii) **ESMA publishes final report on guidelines on the transfer of data between trade repositories under EMIR**

On 24 August 2017, ESMA published its final report setting out guidelines for the transfer of data between TRs under EMIR. The guidelines apply from 16 October 2017 and ESMA will carry out an annual assessment of TRs' compliance with the guidelines.

A copy of the final report is available [here](#).

(iii) **ESMA publishes responses to its consultation on CCP conflicts of interest management under EMIR**

On 25 August 2017, ESMA published the responses received by it to its June 2017 consultation on guidelines relating to conflicts of interest under EMIR for the management by central counterparties (“CCPs”). Respondents include the European Association of CCP Clearing Houses (“EACH”), The International Swaps and Derivatives Association (“ISDA”) and the Futures Industry Association (“FIA”). It is anticipated that the final version of the guidelines will be published by the end of 2017.

(iv) **ISDA releases latest version of the ISDA Standard Initial Margin Model**

On 7 September 2017, ISDA released the latest version of the Standard Initial Margin Model (“ISDA SIMM”), which was a response to the launch of the new EMIR margin rules.

The latest version has a number of improvements which will help develop the method of calculating initial margin requirements on non-cleared derivatives.

A copy of the full article from ISDA is available [here](#).

(v) EMIR Reform - ESMA letter to Commission on third country regimes

On 10 July 2017, ESMA published a letter addressed to European Commission setting out its views on third country regimes within the European Commission's remit. In the letter, ESMA takes note of the EMIR reform proposals, particularly as regards the requirements for the recognition of third country central counterparties ("**CCPs**"), which strengthens the third country CCP regimes. ESMA welcomes the enhanced implementation and monitoring of equivalence decisions on third country regimes by the European Commission. The letter goes on to state that the Commission should consider similar proposals for other market infrastructures and key market players.

A copy of the ESMA letter to the European Commission on third-country regimes can be found [here](#).

(vi) European Commission adopts Delegated Regulations on indirect clearing arrangements under EMIR and MiFIR

On 22 September 2017, the European Commission adopted two Delegated Regulations setting out regulatory technical standards ("**RTS**") relating to indirect clearing arrangements for OTC derivatives and exchange-traded derivatives ("**ETDs**") under EMIR and MiFIR. The Delegated Regulations are:

- ▣ Delegated Regulation amends the EMIR RTS contained in Delegated Regulation (EU) No 149/2013. A copy of Delegated Regulation can be found [here](#).
- ▣ Delegated Regulation contains an RTS which seeks to ensure consistency between Regulation (EU) No 600/2014 ("**MiFIR**") with the EMIR requirements. A copy of Delegated Regulation can be found [here](#).

Once the European Parliament and the European Council have decided not to object to the Delegated Regulations, they will be published in the Official Journal of the EU both Delegated Regulations will apply from 3 January 2018.

(vii) Council of EU publishes Presidency compromise proposal on proposed Regulation amending EMIR

On 29 September 2017, the Council of the EU published a Presidency compromise proposal on the proposed Regulation amending EMIR on:

- ▣ The clearing obligations;

- ▣ The suspension of the clearing obligation;
- ▣ The reporting requirements;
- ▣ The risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty;
- ▣ The registration and supervision of trade repositories; and
- ▣ The requirements for trade repositories.

A copy of the Presidency compromise proposal can be found [here](#).

(viii) ISDA publishes a position paper on Brexit, CCP location and legal uncertainty

On 21 August 2017, ISDA published a position paper on central counterparty (“**CCP**”) location and legal uncertainty and on Brexit. The paper refers to the Commission's June 2017 proposed Regulation amending the EMIR supervisory regime for EU and third-country CCPs.

A copy of the ISDA paper is available [here](#).

Proposed Regulation on CCP Recovery and Resolution

(i) ECB publishes opinion on proposed Regulation on CCP recovery and resolution

On 25 September 2017, the European Central Bank (“**ECB**”) published its opinion on the proposed Regulation on the recovery and resolution of central counterparties (“**CCPs**”). The ECB supports the European Commission's initiative to establish a dedicated EU framework for the recovery and resolution of CCPs and noted that improvements can be made in some areas such as:

- ▣ A greater opportunity for clearing participants to estimate and manage their potential exposure under the Regulation with a loss allocation tool;
- ▣ Increased safeguards for public sector support for CCP's in resolution;
- ▣ Recovery and resolution arrangements for CCP's should be co-ordinated across EU CCP's as one CCP's failure is likely to affect several CCP's at once;
- ▣ The proposed Regulation should be closely aligned with international standards on the recovery and resolution of CCP's; and
- ▣ To clarify the Regulation as to CCP's application for a banking licence.

A copy of the opinion can be found [here](#).

(ii) ECON publishes draft report on proposed Regulation on CCP recovery and resolution

On 27 September 2017, the European Parliament's Committee on Economic and Monetary Affairs (“**ECON**”) published its draft report on the proposed Regulation on the recovery and resolution of CCPs.

The draft report states that the amendments should improve the legal protection for the relevant resolution authority. However, during this process the resolution authority must have full discretion to use the resolution tools that it believes to be the most effective to achieve the resolution, addressing the systemic problems and protecting taxpayers.

While protecting the tax payer and the general public from systemic risk, the report states that there also must be adequate protection for clients of the clearing members and indirect clients. This needs to be recognised within the resolution institutions, the resolution committee within ESMA and in the general transparency requirements.

A copy of the full report can be found [here](#).

Benchmark Regulation

(i) ESMA publishes updated Q&As on Benchmarks Regulation

On 5 July 2017, ESMA published a new set of questions and answers on EU Regulation 2016/1011 (the “**Benchmarks Regulation**”). The Q&A include two answers regarding the transitional provisions under the Benchmarks Regulation, clarifying which benchmarks supervised entities will be allowed to use after 1 January 2018 under transitional provisions.

On 29 September 2017, ESMA published an updated version of its Q&As, with four new Q&As on the Benchmarks Regulation. The four new Q&As are on:

- ▣ The application of the BMR to EU and third country central banks;
- ▣ The exemption relating to single reference price;
- ▣ The definition of "family of benchmarks"; and
- ▣ The definition of "use of a benchmark".

A copy of the updated version of its Q&As can be found [here](#).

(ii) ESMA published a consultation paper on draft guidelines on non-significant benchmarks under Benchmarks Regulation

On 29 September 2017, ESMA published a consultation paper on draft guidelines for non-significant benchmarks under the Benchmarks Regulation.

The consultation paper summarises the proposed content of each of the guidelines for non-significant benchmarks. Chapter 5 deals with the guidelines on the procedures, characteristics and positioning of oversight function. Chapter 6 deals with the guidelines on input data. Chapter 7 deals with the guidelines on the transparency of methodology. Chapter 8 deals with the guidelines on the governance and control requirements for supervised contributors. The deadline for comments on the draft guidelines is 30 November 2017. A copy of the consultation paper can be found [here](#).

A related press release from ESMA explains that the proposals mentioned in the consultation paper are for lighter requirements for non-significant benchmarks, their administrators and supervised contributors in the areas covered, than for significant benchmarks. The press release can be found [here](#).

(iii) European Commission adopts three Delegated Regulations supplementing Benchmarks Regulation

On 29 September 2017, the European Commission adopted three Delegated Regulations supplementing the Benchmarks Regulation:

- ▣ Commission Delegated Regulation which specifies the technical elements of the definitions laid down in paragraph 1 of Article 3 of the Benchmarks Regulation to public availability and administering the arrangements for determining a benchmark. A copy of the Commission Delegated Regulation can be found [here](#).
- ▣ Commission Delegated Regulation which specifies how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed. A copy of the Commission Delegated Regulation can be found [here](#).
- ▣ Commission Delegated Regulation which specifies how the criteria of Article 20(1)(c)(iii) is to be applied for assessing significant events that would have an adverse impact on market integrity, stability, consumers, the economy or the financing of households and businesses in one or more member states. A copy of the Commission Delegated Regulation can be found [here](#).

The three adopted Commission Delegated Regulations are based on drafts consulted on between 22 June and 20 July 2017.

If neither the Council of the EU and the European Parliament object to the Delegated Regulations, they will enter into force 20 days after their publication in the Official Journal of the EU.

Short Selling

(i) ESMA issues consultation paper on the evaluation of the short-selling regulation

On 7 July 2017, ESMA issued a consultation paper on certain elements of the Regulation (EU) No 236/2012 on short selling and certain aspect of credit default swaps (the “**Short Selling Regulation**”).

The three main areas of focus of the consultation paper were: (a) the scope and the functioning of the exemption for market making activities; (b) the procedure for imposing a short term ban on short-selling in case of a significant fall in price of a financial instrument; and (c) the transparency of net short positions, and the related reporting and disclosure requirements.

On 12 September 2017, ESMA published the responses to the consultation paper. The final report will be published by 31 December 2017.

A copy of the consultation paper is available [here](#).

A copy of the responses can be found [here](#)

European Securities and Markets Authority (“ESMA”)

(i) ESMA published detailed opinions to support supervisory convergence in the context of the UK withdrawing from the EU

On 13 July 2017, ESMA published three opinions setting out sector-specific principles in the areas of:

- ▣ Investment firms;
- ▣ Investment management; and
- ▣ Secondary markets.

The opinions provide guidance to NCAs aimed at ensuring a consistent interpretation of the requirements relating to authorisation, supervision and enforcement in order to avoid the development of regulatory and supervisory arbitrage risks related to the relocation of entities, activities and functions from the UK.

ESMA’s opinion on investment management relates to the investment management sector in the context of the anticipated relocation of entities, activities and functions from the UK as a consequence of Brexit. Focused on UCITS ManCos, self-managed investment companies and authorised AIFMs, the opinion addresses areas of potential regulatory and supervisory arbitrage with particular focus on authorisation, governance and internal controls, delegation and effective supervision.

For further details please refer to the Dillon Eustace Publication entitled “ESMA’s Brexit Opinion on Investment Management” which is available [here](#).

A copy of the opinion on investment firms is available [here](#).

A copy of the opinion on investment management is available [here](#).

A copy of the opinion on secondary markets is available [here](#).

International Organization of Securities Commissions (“IOSCO”)

(i) **BCBS and IOSCO co-publish consultation paper on STC short-term securitisations**

On 6 July 2017, the International Organization of Securities Commissions (“**IOSCO**”) and the Basel Committee on Banking Supervision (“**BCBS**”) jointly published a consultation paper on criteria for identifying simple transparent and comparable short-term securitisations (the “**2017 Short Term STC Paper**”).

This paper follows on from an earlier consultation paper issued by IOSCO and BCBS in July 2015 which sought to develop final criteria for identifying simple transparent and comparable (“**STC**”) term securitisations (the “**2015 STC Paper**”).

The BCBS has also published a separate consultation paper on the capital treatment for STC short-term securitisations (the “**2017 Capital Treatment Paper**”). In the consultation, the BCBS sets out proposals for incorporating the short-term STC criteria into the BCBS securitisation framework, which was most recently revised by the BCBS in July 2016. The deadline for responses to both consultations is 5 October 2017.

A copy of the 2017 Short Term STC Paper is available [here](#).

A copy of the 2017 2017 Capital Treatment Paper is available [here](#).

(ii) **IOSCO publishes final report on thematic review of implementation of client asset protection recommendations**

On 27 July 2017, the IOSCO published its final report on its thematic review of the adoption of recommendations relating to the protection of client assets the “**Final Report**”).

The purpose of the Final Report is to review the progress of 38 IOSCO members from 36 jurisdictions in adopting the principles previously issued by IOSCO for the protection of client assets. These principles were identified by IOSCO in 2014 and were contained in a report entitled “Recommendations Regarding the Protection of Client Assets” dated January 2014”.

The eight principles set out in the report are designed to help regulators with enhancing their supervision of intermediaries holding client assets. They do this by outlining the role of the intermediary and the regulator in protecting client assets.

A copy of the Final Report is available [here](#).

Capital Markets Union (“CMU”)

(i) **ECB publishes response to the European Commission’s consultation on operations of the ESAs**

On 7 July 2017, the ECB published its response to the European Commission’s consultation paper from March 2017 on the operations of the three European Supervisory Authorities (“**ESA’s**”).

Amongst other points, the ECB reiterates that a strong Capital Markets Union (“**CMU**”) will require the creation of a single capital markets supervisor. The ECB also calls for it to be given voting rights, membership to ESAs boards and observer status to the ESMA board of supervisors.

A copy of the responses are available [here](#).

(ii) **Council of the EU publishes conclusions on European Commission's communication on the CMU action plan mid-term review**

On 11 July 2017, the Council of the EU published its conclusions on the European Commission's communication of June 2017 on the Capital Markets Union (“**CMU**”) mid-term review.

The Council of the EU indicated that it welcomed the European Commission's communication on the CMU mid-term review. In addition, the Council of the EU indicated that it; (i) welcomed the Commission’s proposals for amendments to the framework for the ESAs; (ii) looks forward to the upcoming legislative proposal regarding the prudential treatment of investment firms; (iii) looks forward to the upcoming legislative proposal regarding an EU framework for covered bonds; (iv) welcomed the Commission’s proposals for a potential EU framework in the field of Fintech; (v) takes note of the Commission's initiatives aimed at promoting long-term investment including an appropriately designed pan-EU personal pension product and an amendment to the Solvency II Delegated Regulation, in full respect of member states' tax competences; (vi) welcomes the initiatives aimed at strengthening banks' capacity to lend to the economy, including measures to support secondary markets for non-performing loans; and (vii) encourages the Commission to assess options for a modern EU framework for the effective and binding resolution of investment disputes.

A copy of the conclusion is available [here](#).

(iii) European Commission publishes a roadmap on treatment of cross-border intra-EU investments

On 25 July 2017, the European Commission published a roadmap on a new initiative under the CMU action plan on an interpretative communication on the existing EU standards for the treatment of cross-border intra-EU investments.

The roadmap aims to provide greater transparency on the effective protection of EU investor rights in the single market, thereby creating a more positive environment to attract investments. It is proposed that the Commission will adopt an interpretative communication to provide guidance/ greater clarity on existing EU rules for the treatment of cross-border EU investments.

Among other things, the Commission considers that the interpretative communication would help to prevent member states from adopting measures that would infringe upon EU law relevant to investments. Stakeholders were invited to provide feedback on the roadmap via the Commission's webpage until 22 August 2017.

A copy of the roadmap is available [here](#).

(iv) European Commission publishes a roadmap on the prevention and amicable resolution of investment disputes within the single market

On July 25 2017, the European Commission published a roadmap on a new initiative under the CMU action plan on the prevention and amicable resolution of intra-EU investment disputes. The roadmap aims to improve the investment climate in the EU by providing dispute prevention tools and tools for the effective amicable resolution of intra-EU investment disputes with the help of an independent third party. Stakeholders were invited to provide feedback on the roadmap via the Commission's webpage until 22 August 2017.

A copy of the roadmap is available [here](#).

(v) European Commission publishes consultation paper on removing barriers to efficient and resilient post-trade services

On 23 August 2017, the European Commission published a consultation paper entitled "Post-trade in a Capital Market Union: dismantling barriers and strategy for the future".

As part of the CMU action plan, the European Commission is reviewing progress made in removing barriers to post-trade market infrastructure. The aim of the consultation is to gather views on a range of issues including the current state of post-trade markets, the main trends and challenges faced by post-trade services providers and users as well as the best ways to remove barriers, including through financial technology. Stakeholders are invited to provide feedback, using an online questionnaire, until 15 November 2017.

A copy of the consultation document is available [here](#).

(vi) European Commission speech on financial services initiatives for 2017 and early 2018

On 15 September 2017, the European Commission published a speech given on 14 September 2017 by the European Commissioner. The Commissioner set out a number of financial services initiatives that the Commission intends to take action before the end of 2017 or in early 2018 such as; (i) its proposals for reforms to European System of Financial Supervision (“**ESFS**”) namely the review of the ESAs (that is, ESMA, EIOPA and the EBA) and the European Systemic Risk Board (“**ESRB**”); (ii) its FinTech action plan; and (iii) its sustainable finance action plan.

The ESFS, FinTech and Sustainable Finance initiatives form part of the Commission's effort to establish a capital markets union.

A copy of the speech can be found [here](#).

(vii) European Commission publishes its proposals for reforms to European System of Financial Supervision (“ESFS”)

On 20 September 2017, the European Commission published the legislative proposals that it has adopted to reform the European System of Financial Supervision (“**ESFS**”). It proposes:

- ▣ To amend the Regulation 1092/2010 (the “**ESRB Regulation**”) to reform the ESRB's governance;
- ▣ To amend the Regulations that have established the ESAs and to give the ESAs additional powers and responsibilities and to reform the governance and funding arrangements;
- ▣ To amend the Markets in Financial Instruments Regulation (Regulation 600/2014) (“**MiFIR**”) and the Benchmarks Regulation ((EU) 2016/1011) to give ESMA additional direct supervisory powers; and
- ▣ To amend the proposals for EMIR reform.

A copy of the press release can be found [here](#).

(viii) EBA publishes discussion paper on its approach to FinTech

In spring 2017, the EBA commenced a FinTech mapping exercise to establish an insight into financial services offered, innovations applied and regulatory treatment by FinTech firms in the EU.

On 4 August 2017, the EBA published a discussion paper on its approach to FinTech. The deadline for comments on 6 November, 2017. A public hearing will be held on 4 October and those responses will depend on further actions the EBA will need to take in 2018.

A copy of the full discussion paper is available [here](#).

Market Abuse Regulation (“MAR”)

(i) Implementing Regulation on ITS regarding procedures and forms for competent authorities exchanging information with ESMA under MAR enters into force

Commission Implementing Regulation (EU) 2017/1158 on ITS regarding procedures and forms for competent authorities exchanging information with ESMA under the Markets Abuse Regulation (Regulation 596/2014) (“**MAR**”) entered into force on 20 July 2017.

A copy of the Implementing Regulation is available [here](#).

(ii) ESMA publishes updates to the Q&A on MAR

During the period 1 July 2017 to 30 September 2017, ESMA has updated its MAR Q&A as follows:

- ▣ In July 2017 a new question (question 7.7) was added concerning the definition of a closely associated person in the context of manager’s transactions under Article 3(1)(26) of MAR.
- ▣ In September 2017, questions and answers on the following topics were added concerning: (i) persons professionally arranging or executing transactions; (ii) market soundings; (iii) insider list requirements; and (iv) issuers’ responsibility in case of delegation.
- ▣ On 29 September 2017, a new question (question 5.2) was added which addresses how an issuer should deal with a situation where it has delayed a disclosure of inside information in accordance with Article 17(4) of MAR and due to subsequent circumstances that information loses the element of price sensitivity and is no longer inside information.

A copy of the July 2017 Q&A is available [here](#).

A copy of the September 2017 Q&A is available [here](#).

(iii) ESMA publishes MAR Guidelines Compliance Table relating to commodity derivatives markets or related spot markets

On 28 August 2017, ESMA published a Guidelines Compliance Table under MAR. The Guidelines Compliance Table sets out which competent authorities have informed ESMA

that they either comply, do not comply or intend to comply with the ESMA's guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives.

A copy of the Guidelines Compliance Table can be found [here](#).

Capital Requirements Directive IV / CRR

(i) **ECON publishes its report on proposed Regulation amending CRR as regards transitional period for mitigating impact on own funds of IFRS 9 introduction**

The Committee on Economic and Monetary Affairs of the European Parliament (“**ECON**”) published its report dated 14 July 2017 on the proposed Regulation amending Regulation (EU) No 575/2013 (“**CRR**”) as regards the transitional period for mitigating the impact on own funds of the introduction of IFRS 9 and the large exposures treatment of certain public sector exposures denominated in non-domestic currencies of member states.

A copy of the report is can be found [here](#).

(ii) **EBA publishes a consultation paper on guidelines on uniform disclosure of IFRS 9 transitional arrangements under CRR**

On 13 July 2017, the EBA published a consultation paper on guidelines on uniform disclosures under CRR as regards the transitional period for mitigating the impact on own funds of the introduction of IFRS 9. The consultation closed on 13 September, 2017.

A copy of the consultation paper is available [here](#).

(iii) **EBA publishes the final report on draft RTS and ITS on authorisation of credit institutions under CRD IV**

On 14 July 2017, the EBA published the final report on draft RTS and ITS on authorisation of credit institutions under Commission Directive 2013/36/EU (“**CRD IV**”). The draft RTS relates to the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which may prevent the effective exercise of supervisory powers. The draft ITS relates to the standard forms, templates and procedures for the provision of the information required for the authorisation of credit institutions.

A copy of the final report is available [here](#).

(iv) ESAs publish a consultation paper on draft ITS relating to the mapping of ECAIs' credit assessments under the CRR

On 18 July 2017, the ESAs published a consultation paper containing the draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under the CRR. The consultation closed on 18 September 2017.

A copy of the consultation paper is available [here](#).

(v) EBA publishes revised versions of the Single Rulebook Q&A under CRD IV / CRR

During the period 1 July to 30 September 2017 the EBA has updated its Q&A on the Single Rulebook which contains new questions and answers relating to CRD IV / CRR and the Bank Recovery and Resolution Directive.

- ▣ Question ID: 2014_1376 relates to the inclusion of securities financing transactions in the calculation of own funds required. It provides clarification on the definition of the 'EAD' and 'M' inputs to the CVA Standardised Formula.
- ▣ Question ID: 2017_3273 relates to the reporting of Pillar 2 requirements for institutions.
- ▣ Question ID: 2014_1523 relates to the validation rules Regulation (EU) No 680/2014 - ITS on supervisory reporting of institutions.

A copy of the Single Rulebook Q&A is available [here](#).

(vi) Update - RTS and ITS in the context of CRD IV / CRR

Certain RTS and ITS in the context of Capital Requirements Directive (2013/36/EU) ("CRD IV") and EU Regulation 575/2013 ("CRR") were adopted by the European Commission, or entered into force, during the period in question:

- ▣ On 28 July 2017, Delegated Regulation (EU) 2017/1230 on RTS further specifying additional objective criteria relating to liquidity coverage for credit institutions entered into force. A copy of the Delegated Regulation can be found [here](#).
- ▣ On 21 August 2017, the Delegated Regulation amending the CRR as regards the waiver on own funds requirements for certain covered bonds was adopted by the European Commission. A copy of the amending Delegated Regulation can be found [here](#).
- ▣ On 4 September 2017, the European Commission adopted the final draft of a Commission Delegated Regulation which amends the CRR with regard to RTS for disclosure of encumbered and unencumbered assets. A copy of the regulatory

technical standards for disclosure of encumbered and unencumbered assets can be found [here](#).

- ▣ On 6 September 2017, Commission Implementing Regulation (EU) 2017/ 1443 on ITS on supervisory reporting of institutions under the CRR to reflect IFRS 9 changes to financial reporting (“**FINREP**”) entered into force. A copy of the Commission Implementing Regulation on ITS on supervisory reporting of institutions under the CRR can be found [here](#).
- ▣ On 20 September 2017, Commission Implementing Regulation (EU) 2017/ 1468 amending Implementing Regulation 2016/2070 as regards benchmarking portfolios and reporting instructions under the CRD IV entered into force. A copy of the Commission Implementing Regulation can be found [here](#).

(vii) EBA publishes consultation paper on draft amendments to ITS on supervisory disclosure under CRD IV

On 22 September 2017, the EBA published a consultation paper on amending Commission Implementing Regulation (EU) No 650/2014. This Implementing Regulation contains ITS on the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with the CRD IV Directive. The consultation paper sets out proposals to take into account changes in ITS from EU legal framework since 2014, which includes:

- ▣ The liquidity coverage ratio (“**LCR**”);
- ▣ EBA guidelines on common procedures for supervisory review and evaluation processes (“**SREP**”); and
- ▣ The establishment of the single supervisory mechanism (“**SSM**”) such as the division of responsibilities between the European Central Bank (“**ECB**”) and national competent authorities.

The deadline for responses is 22 December 2017.

A copy of the consultation paper can be found [here](#).

(viii) ECB publishes finalised guide on materiality assessment for changes to counterparty credit risk models

On 25 September 2017, the ECB published its final version of the guide on materiality assessment for changes to counterparty credit risk models. The guide assists credit institutions in the single supervisory mechanism (“**SSM**”) in their self-assessment of materiality of changes and extensions to internal model method (“**IMM**”) and the advanced method for credit valuation adjustment risk (“**A-CVA**”) models which is required under the Capital Requirements Regulation (Regulation 575/2013) (“**CRR**”) for model approval of

material model extension and changes to credit, operational and market risk internal models.

A copy of the final version of the ECB Guide on materiality assessment can be found [here](#).

Access to a webpage with links to the individual responses can be found [here](#).

(ix) EBA publishes final guidelines on internal governance under CRD IV

On 26 September 2017, the EBA published final guidelines on internal governance that credit institutions and investment firms must implement to ensure effective and prudential management under Article 74(3) of the CRD IV. The guidelines cover:

- ▣ The role and composition of the management body and committees, including risk and audit committees;
- ▣ The governance framework and a firms' outsourcing policies;
- ▣ Risk culture and business conduct and reporting of breaches to competent authorities;
- ▣ Internal controls framework and mechanisms, compliance function and internal audit function; and
- ▣ Business continuity management.

The final guidelines will enter into force on 30 June 2018 and the existing guidelines on internal governance which was published in September 2011 will be repealed on the same date.

A copy of the final guidelines can be found [here](#).

(x) ESMA and EBA publish final guidelines on assessment of suitability of management body members

On 26 September 2017, the EBA and ESMA published final guidelines on the assessment of the suitability of members of the management body and key function holders in accordance with the CRD IV and MiFID II.

The guidelines specify the requirement to assess the members of the management body and key function holders that have a significant influence over the institution. The guidelines set out to harmonise criteria for suitability assessment of members of the management body and key function holders.

The final guidelines will enter into force on 30 June 2018 and the existing guidelines on the assessment of the suitability of members of the management body and key function holders which was published in November 2012 will be repealed on the same date.

A copy of the final guidelines can be found [here](#).

Payment Services Directive 2 (“PSD2”)

(i) EBA publishes final guidelines on professional indemnity insurance under PSD2

On 7 July 2017, the EBA published a final report setting out guidelines addressed to NCAs on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance (“PII”) or other comparable guarantee under the Directive (EU) 2015/2366 (the “**Payment Services Directive 2**” or “**PSD2**”). The EBA had previously consulted on these proposals between September and December 2016. The EBA introduced some amendments to the final guidelines as a result of the feedback which it received.

The deadline for NCAs to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from 13 January 2018.

A copy of the final report is available [here](#).

(ii) EBA publishes final guidelines on authorisation and registration under PSD2

On 11 July 2017, the EBA published a final report containing final guidelines on the information to be provided for the authorisation of payment institutions or e-money institutions and the registration of account information service providers under PSD2. The EBA previously consulted on a draft version of the guidelines in November 2016. The EBA introduced some amendments to the final guidelines as a result of the feedback which it received.

A copy of the final report is available [here](#).

(iii) EBA publishes consultation paper on draft RTS and ITS on EBA electronic central register under PSD2

On 24 July 2017, the EBA published a consultation paper on the draft RTS and ITS concerning the EBA electronic central register under PSD2. The electronic central register will contain information notified by NCAs to the EBA.

The draft RTS set out requirements relating to access to the register by the various parties, the nature of the register (e.g. search results, display, performance, safety etc) and the responsibilities of the EBA concerning the management and maintenance of the register. The draft ITS contains information on the type, and format, of information that will be contained in the register. The consultation closed on 18 September 2017.

A copy of the consultation paper is available [here](#).

(iv) European Commission publishes consultation paper on transparency and fees in cross-border transactions in EU

On 24 July 2017, the European Commission published a consultation paper on transparency and fees in cross-border transactions in the EU. The consultation will close on 30 October 2017.

A copy of the consultation paper is available [here](#).

(v) EBA publishes final guidelines on major incident reporting under PSD2

On 27 July 2017, the EBA published its final report on guidelines on major incident reporting under PSD2. The guidelines are addressed to all payment service providers (“PSPs”) and competent authorities in the 28 EU Member States. The guidelines will apply from 13 January 2018.

A copy of the guidelines are available [here](#).

(vi) EBA publishes consultation paper on fraud reporting requirements under PSD2

On 2 August 2017, the EBA published a consultation paper on its draft guidelines on reporting requirements on statistical data on fraud under PSD2. The final guidelines will be published once the consultation closes on 31 October 2017. The EBA is holding a public hearing on the guidelines on 5 October 2017. The guidelines will apply from 13 January 2018.

A copy of the consultation paper is available [here](#).

(vii) Central Bank updates Part 4 of the Prudential Requirements for Payment Institutions under PSD 1

In July 2017, the Central Bank updated Part 4 of the Prudential Requirements for Payment Institutions authorised under S.I. No 383 of 2009. This statutory instrument transposes Directive 2007/64/EC (the “Payment Services Directive” or “PSD 1”) into Irish law.

The update can be found [here](#).

Prospectus Directive

(i) ESMA publishes Consultation Papers on EU Growth prospectus, scrutiny and approval and on the format and content of a prospectus

On 6 July 2017, ESMA published three Consultation Papers proposing simplification of the Prospectus Regulation, with the objective of providing companies, mainly smaller companies, with easier and less expensive access to capital and to make prospectuses more accessible to investors.

The three Consultation Papers comprise:

- ▣ Consultation Paper on the format and content of the prospectus;
- ▣ Consultation Paper on EU Growth prospectus; and
- ▣ Consultation Paper on scrutiny and approval.

The consultation closed on 28 September 2017. ESMA will deliver a final report to the European Commission prior to the end of the first quarter of 2018.

The Consultation Papers can be found [here](#).

(ii) **Central Bank issues Q&A on new Prospectus Regulatory Framework**

On 4 August 2017, the Central Bank issued the first edition of the Prospectus Regulatory Framework Q&A, which updates and replaces the Frequently Asked Questions on the Prospectus Regulation previously published by the Central Bank.

A copy is available [here](#).

Transparency Directive

(i) **Transparency (Directive 2004/109/EC) (Amendment) Regulations 2017**

The Transparency (Directive 2004/109/EC) (Amendment) Regulations 2017, (S.I. No. 336 of 2017) (the “**2017 Transparency Regulations**”) came into operation on 1 August 2017. The 2017 Transparency Regulations amends the Transparency (Directive 2004/109/EC) Regulations 2007 (the “**Principal Regulations**”). One of the main changes implemented by the 2017 Transparency Regulations is to introduce certain requirements for “extractive industry issuers” and “logging issuers”.

A copy of the 2017 Transparency Regulations can be found [here](#).

Consumer Law Directives

(i) **European Commission launches online consultation on targeted revisions to EU consumer law directives**

On 30 June 2017, following on from the results of the fitness check on EU consumer and marketing law, and the Consumer Rights Directive (2011/83/EU), the European Commission published an inception impact assessment and launched an online consultation to seek views on possible targeted amendments to key EU consumer law directives such as Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“**Unfair Commercial Practices Directive**”), Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated

guarantees (“**Sales and Guarantees Directive**”), Directive 93/13/EEC on unfair terms in consumer contracts (“**Unfair Contract Terms Directive**”), Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (“**Price Indication Directive**”); Directive 2006/114/EC concerning misleading and comparative advertising (“**Misleading and Comparative Advertising Directive**”) and Directive 2009/22/EC on injunctions for the protection of consumers’ interests (“**Injunctions Directive**”). The consultation closing date is 8 October 2017.

A copy of the consultation can be found [here](#).

Credit Rating Agencies (“CRAs”)

(i) ESMA publishes responses to the consultation on CRA endorsement guidelines

On 16 August 2017, ESMA published the responses to the consultation from April 2017 on updating its 2011 guidelines on the application of endorsement, which sets out conditions by which a credit rating agency established in the European Union may endorse a credit rating issued in a third country under the Credit Rating Agencies Regulation (Regulation 1060/2009). The finalised guidelines will be published in the fourth quarter of 2017, with the guidelines entering into force on 1 June 2018.

A copy of the responses are available [here](#).

Central Bank of Ireland

(i) Central Bank issues a Brexit FAQ

In July 2017, the Central Bank issued a Brexit related FAQ document providing general information to financial services firms considering relocating their operations from the UK to Ireland.

The Central Bank’s FAQ addresses at a high level a number of topics including; (i) the Central Bank’s approach to authorisation, its timelines and requirements; (ii) the impact of Brexit on existing Irish authorised firms; (iii) the Central Bank’s proposed approach to issues concerning a firm’s substance in Ireland; (iv) and the Central Bank’s approach to outsourcing to the UK firms. It also deals with other questions such as whether Ireland has a similar regime to the UK’s Senior Managers Regime and Certification Regimes. It also addresses the Central Bank’s views on centralised risk management in the UK or elsewhere and whether a firm’s key employees can hold more than one position before the entity goes live. The FAQ provides links to the Central Bank’s relevant web-site application documentation as well as explanatory material on the authorisation processes for the different regulatory regimes.

A copy of the Central Bank’s FAQ document can be found [here](#).

(ii) Enhancements to the Regulated Disclosures submission process

On 14 September 2017, the Regulated Disclosures Teams in the Central Bank announced that they are currently upgrading their document management and workflow system which will affect submissions under the Prospectus, Transparency and Short Selling legislative regimes.

One change that will impact submitters is that of Excel templates which contain basic information about the submission will be required with each submission. It is similar to the process that is already in place for Final Terms submissions and Short Selling notifications whereby the Excel template will be machine-readable thereby increasing processing efficiency. The new system will be implemented in the first quarter of 2018.

A copy of the press release can be found [here](#).

Minimum Competency Code and Minimum Competency Regulations

(i) Central Bank Introduces New Minimum Competency Standards

In September 2017, the Central Bank issued a revised Minimum Competency Code 2017 (“**MCC**”) along with the new Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Minimum Competency Regulations 2017 (the “**Regulation**”). Together the foregoing will replace the former Minimum Competency Code 2011.

Following on from the public consultation late last year, the changes include a requirement that:

- ▣ A regulated firm demonstrates that staff have obtained the appropriate competence and skills through experience or training gained in an employment context in addition to obtaining a relevant qualification;
- ▣ At least one key staff member involved in the design of a retail financial product must meet a prescribed standard of minimum competency;
- ▣ Board members of mortgage credit intermediaries must complete six hours of continuous professional development each year; and
- ▣ Regulated firms must carry out an annual review of staff members’ development and experience needs.

The revised Minimum Competency Code and the Regulation will take effect on 3 January 2018.

An article prepared by Dillon Eustace on “Central Bank Introduces New Minimum Competency Standards” can be found [here](#).

A copy of the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017 can be found [here](#).

Financial Services and Pensions Ombudsman

(i) Changes to Financial Services Regulation

In July 2017, two new pieces of legislation were signed into Irish law, which change the landscape of consumer complaints and make important changes to the offices of the Financial Services Ombudsman (“**FSO**”) and the Pensions Ombudsman.

- ▣ The Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 (the “**Amendment Act**”). The Amendment Act retrospectively amends the 6 year limitation period for certain types of complaints. Previous complaints which the FSO declined because of the date of conduct may now be able to be re-submitted relating to “long-term financial services”
- ▣ The Financial Services and Pensions Ombudsman Act 2017 (the “**FSPO Act**”). The FSPO amends updates and consolidates legislation underpinning the FSO and the Pensions Ombudsman, amalgamating both offices to establish the Office of the Financial Services and Pensions Ombudsman. The time limit extension of the FSPO Act allows those making certain complaints relating to a “long-term financial service” and broadens the categories of individuals who may be subject to the Ombudsman’s compulsory information gathering powers, when investigating complaints about a financial service provider.

An article prepared by Dillon Eustace can be accessed [here](#).

A copy of the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 can be found [here](#).

A copy of the Financial Services and Pensions Ombudsman Act 2017 can be found [here](#).

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

(i) Wolfsberg Group publishes updated guidance on anti-bribery and corruption compliance programmes for financial institutions

On 4 July 2017, the Wolfsberg Group published an updated guidance paper containing guidance as to how financial institutions should create an effective anti-bribery and corruption compliance programme.

The guidance focuses on how institutions can manage their own bribery and corruption risk in respect of the behavior of their employees and third parties acting on their behalf.

The updated guidance paper makes essential changes to the definition of government/public officials, intermediaries and associated controls, risk management of investments and joint ventures, offering of employment and work experience and reducing the focus on customer-related anti money laundering provisions. The guidance paper goes on to state that the greater risk to financial institutions is from new business from a government/public official or a commercial entity rather than individual customers and should take a risk-based approach.

A copy of the guidance is available [here](#).

(ii) G20 Leader's statement on countering terrorism: aspects of interest for financial services sector

On 7 July 2017, the G20 published a Leader's statement at Hamburg on countering terrorism. Amongst other matters, the G20 underlined its resolve to tackle all sources, techniques and channels of terrorist financing and reaffirmed its call for a swift and effective implementation of relevant UN Security Council Resolutions and the FATF standards worldwide.

A copy of the full G20 Leader's statement can be found [here](#).

(iii) European Commission publishes a roadmap towards new methodology for EU assessment of high-risk third countries under MLD4

On 11 July 2017, the Council of the EU published a cover note and letter (dated 30 June) from Commissioner Vera Jourova to the Presidency of the Council of the EU, concerning the assessment of high-risk third countries under the Fourth EU Money Laundering Directive 2015/849/EU ("**MLD4**").

The annex to the letter contains a roadmap which aims at delivering a new approach for identifying high-risk third countries by following a staged approach, focusing on priority third countries first. The Commission wants to build on, complement, and maintain a consistency with the work of the Financial Action Task Force ("**FATF**").

A copy of the roadmap is available [here](#).

(iv) MLD4 - Update as regards to Central Register for beneficial ownership in Ireland

Pursuant to MLD4, each Member State is required to establish a central register of beneficial ownership of corporate and other legal entities, including trusts (the "**Central Register**").

Under MLD4 it was envisaged that each such Central Registry would be implemented prior to the proposed transposition date for MLD4, namely, the 26 June, 2017. However, due to ongoing discussions in relation to the Fifth Anti-Money Laundering Directive ("**MLD5**"), which are now at an advanced stage, the Department of Finance has confirmed that the

date for the establishment of the Central Register in Ireland is now expected to take place before the end of 2017.

(v) Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the “Eurocrime Directive”)

Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the “Eurocrime Directive”) was published in the Official Journal of the EU on 28 July 2017.

A copy of the Eurocrime Directive can be found [here](#).

(vi) EC publishes roadmap on access to centralised bank account registries

On 9 August 2017, the European Commission published a roadmap for widening access to centralised bank and payment account registries. The Commission invited comments on the roadmap until 6 September 2017. The roadmap has an indicative planning date of quarter one, 2018.

A copy of the roadmap can be found [here](#).

(vii) FATF publishes Mutual Evaluation Report on Ireland

On 7 September 2017, the Financial Action Task Force (“FATF”) published its Fourth Mutual Evaluation Report on Ireland’s AML and CTF, based on its 2012 Recommendations. It has found that Ireland has a sound and substantially effective regime to tackle money laundering (“ML”) and terrorist financing (“TF”), but that it could do more to obtain ML and TF convictions. Ireland was found to be compliant with 10 of the Recommendations and non-compliant with 1 of them. It was rated as either largely compliant or partially compliant with the remainder of the Recommendations.

A copy of the full Dillon Eustace article entitled “The FATF evaluates Ireland’s AML/CTF measures” can be found [here](#).

A copy of the report can be found [here](#).

(viii) Joint Committee of the ESAs publishes final guidelines under revised Wire Transfer Regulation

On 22 September 2017, the Joint Committee of the ESAs published its final guidelines under the revised Wire Transfer Regulation (Regulation (EU) 2015/847) (revised “WTR”) on the measures that payment service providers (“PSPs”) should take to detect missing or incomplete information on the payer or the payee. It also addresses the requisite procedures required to manage a transfer of funds which lack the required information. The final guidelines outline feedback from the April 2017 consultation and contain some changes to the original guidelines as a result of the feedback.

A copy of the final guidelines can be found [here](#).

Data Protection

(i) **EDPS Opinion on the Proposal for a Regulation on Privacy and Electronic Communications (the “ePrivacy Regulation”)**

On 20 July 2017, a summary of the Opinion of European Data Protection Supervisor (the “**EDPS**”) (first published in April 2017) on the Proposal for Regulation on Privacy and Electronic Communications (the “**e-Privacy Regulation**”) (the “**Proposal**”) was published in the Official Journal of the EU (the “**Opinion**”).

Further to a request by the European Commission, the Opinion outlines the position of the EDPS on the Proposal which is to repeal and replace the e-Privacy Directive. The Opinion is structured as follows:

- ▣ Section 2 summaries the main observations about the Proposal focusing on the positive aspects;
- ▣ Section 3 deals with key concerns and provides recommendations on how to address them; and
- ▣ The Annex to the Opinion sets out additional concerns and recommendations for further improvements.

The EDPS welcomed and supports the Proposal which aims to protect the right to privacy guaranteed by article 7 of the Charter of Fundamental Rights, of which confidentiality of communications is an essential component.

The EDPS further welcomed the ambition to provide a high level of protection with respect to both content and meta-data and supports the objective of extending the confidentiality obligations to a broader range of services, including the so-called over the top services.

However the EDPS raised certain concerns on the Proposal as set out in the Opinion. The full text of the Opinion can be accessed [here](#).

(ii) **EU Trade Association issues letter to European Commission on the consultation processes relating to GDPR guidelines**

On 13 July 2017, a group of EU trade associations issued a letter (the “**Letter**”) to the European Commission on the Article 29 Working Party Stakeholder consultation process regarding guidelines under the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”).

More specifically, the Association for Financial Markets in Europe (“**AFME**”), the Association of Mutual Insurers and Insurance Cooperatives in Europe (“**AMICE**”), the

European Federation of Insurance Subsidiaries (“**BIPAR**”), Business Europe, the European Banking Federation (“**EBF**”), the European Fund and Asset Management Association (“**EFAMA**”), the Federation of European Securities Exchanges (“**FESE**”), Pensions Europe, Insurance Europe and Invest Europe (the “**Associations**”) noted in the Letter that they welcome the opportunity to provide comments on GDPR guidelines published by the Article 29 Working Party but they expressed their concerns over the Working Party stakeholder consultation process.

The Associations noted that the consultation processes of the Article 29 Working Party to date have taken place with a 30-day deadline to respond. The Associations noted that this was too short a deadline, bringing to their attention the European Commission Guidelines for Stakeholder Consultation under the Better Regulation Agenda which provides for a 12 week consultation period for certain initiatives.

In the Letter, the Associations called on the Article 29 Working Party to ensure that the final GDPR guidelines are developed as swiftly as possible and that a reasonable consultation period is set.

The Associations recommended that, in the longer term, the Article 29 Working Party should follow the Better Regulations Guidelines and use a 12 week consultation period.

In the Letter, the Associations also suggested improvements to workshops which are used as part of the stakeholder consultation process and note an additional concern over the fact that the guidelines are non-binding but can still be introduced as compulsory requirements at national level and it is therefore important that such guidelines provide clarity and help facilitate implementation, and do not undermine the existing Level 1 provisions that were set as part of the political agreement.

The Letter can be accessed [here](#).

(iii) Irish Data Protection Commissioner launches consultation on the topics of Transparency and International Data Transfers under the General Data Protection Regulation

The EU Article 29 Working Party will hold a third Fablab in Brussels on 18 October 2017 to consult with stakeholders on their views in relation to transparency and international data transfers under the GDPR. The Fablab will look at:

- ▣ The preparation of new guidelines on transparency under the GDPR; and
- ▣ The updating of existing guidelines on international data transfers.

Ahead of the Fablab, the Irish Data Protection Commissioner has launched an online consultation on the topics of transparency and international data transfers under the GDPR, which will run from 6 September 2017 until 13 October 2017.

A copy of the statement from the Data Protection Commissioner on the consultation can be found [here](#).

(iv) Data Protection Commissioner publishes Guidance on Qualifications for Data Protection Officers under the GDPR

On 14 August 2017, the Data Protection Commissioner published guidance on appropriate qualifications for a Data Protection Officer (the “DPO”) (the “Guidance”) under the GDPR.

The GDPR requires the appointment of a DPO in certain circumstances. Article 37(5) of the GDPR, provides that the DPO “shall be designated on the basis of professional qualities and in particular expert knowledge of Data Protection Law and Practices and the ability to fulfil the tasks referred to in article 39”. The professional qualities referred to are not further defined or expanded upon in the GDPR and the Guidance notes that this allows organisations to decide on their DPO’s qualifications and training.

The Guidance further notes that the appropriate level of qualification and expert knowledge of a DPO shall be determined according to the personal data processing operations carried out, the complexity and scale of data processing, the sensitivity of the data being processed and the protection required for the data being processed.

The Guidance sets out examples of relevant skills and expertise which include:

- ▣ Expertise in national and European Data Protection Laws and practices including an in-depth understand of the GDPR;
- ▣ Understanding of the processing operations carried out;
- ▣ Understanding of information, technologies and data security;
- ▣ Knowledge of the business sector and the organisation; and
- ▣ The ability to promote a Data Protection culture within the organisation.

The Guidance notes that organisations should proactively decide on the qualifications and level of training required for their DPO and that organisations should be aware that there are various training options that may be pursued. The Guidance also sets out the following non-exhaustive list of factors be taken into consideration when selecting the appropriate DPO training program which includes:

- ▣ The content in means of the training and assessment;
- ▣ Whether training needed is certified by an accredited body and the standing of the accredited body; and
- ▣ Whether training and certification is recognised internationally.

The Guidance goes on to state that in any case a DPO should have an appropriate level of expertise in data protection law and practices to enable them to carry out their critical role.

The Guidance can be accessed [here](#).

Non-Financial Reporting

(i) EU Directive on Non-Financial Reporting signed into Irish law

The European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017 (the “**2017 Non-Financial Disclosure Regulations**”) were signed into Irish law 30 July 2017 by the Minister for Jobs, Enterprise and Innovation. The 2017 Non-Financial Disclosure Regulations implement the EU Directive on Non-Financial Reporting and will come into operation on 21 August 2017.

A copy of the 2017 Non-Financial Disclosure Regulation can be found [here](#).

Dillon Eustace
September 2017

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501
E-mail: enquiries@dilloneustace.ie
Website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the Regulatory and Compliance team members below.

Andrew Bates

E-mail: andrew.bates@dilloneustace.ie

Tel : + 353 1 673 1704

Fax: + 353 1 667 0042

Breeda Cunningham

E-mail: breeda.cunningham@dilloneustace.ie

Tel : + 353 1 673 1846

Fax: + 353 1 667 0042

Karen Jennings

E-mail: karen.jennings@dilloneustace.ie

Tel : + 353 1 667 0022

Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2017 Dillon Eustace. All rights reserved.

This Investment Firms Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 30 September 2017, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO