



1 August 2018

Money Market Funds Regulation (“MMF Regulation”) Update

1. Commencement of a Delegated Regulation

On 10 April 2018 the European Commission adopted a [Regulation](#) (the “Delegated Regulation”) amending and supplementing [the MMF Regulation](#). On 13 July 2018, the Delegated Regulation was published in the Official Journal of the EU (“OJ”) and will enter into force on 2 August 2018. However, the Delegated Regulation will apply to new and existing money market funds (“MMFs”) from 21 July 2018 with the exception of Article 1 (which contains the amendment to the MMFR set out at (a) below) which will apply from 1 January 2019.

The Delegated Regulation imposes additional requirements on managers of MMFs where they are investing in certain categories of assets, as follows:

(a) Simple, transparent and standardised (“STS”) securitisations and asset-backed commercial papers (“ABCPs”)

Under the MMF Regulation, there is a specific incentive to invest in STS securitisations and ABCPs. In this regard, the Delegated Regulation simply amends the MMF Regulation to cross-refer to the securitisation regime already set down in Regulation (EU) 2017/2402 (which set out a general framework for securitisation and created a specific framework for STS securitisation).

(b) Assets received under a Reverse Repurchase Agreement

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The Delegated Regulation provides clarity on the specific quantitative and qualitative requirements relating to assets received under reverse repurchase agreements, which include:

- the assets shall be subject to haircuts in accordance with the requirements set out under Regulation (EU) 575/2013 (on prudential requirements for credit institutions and investment firms);
- Managers of MMFs ("MMF Managers") are required to apply higher haircuts than the minimum thresholds set out in Regulation (EU) 575/2013 where they consider it necessary to ensure that the collateral received as part of the reverse repurchase agreement is sufficiently liquid. The Delegated Regulation prescribes a list of factors that MMF Managers must take account of when applying a higher haircut;
- MMF Managers are required to put in place a clear haircut policy adapted to each asset received as collateral. The policy should be documented and should substantiate each decision to apply a specific haircut to the value of an asset;
- MMF Managers should also monitor and revise the amount of the haircut or the additional haircut taking into account the residual maturity or other factors related to the viability of the counterparty; and
- The Delegated Regulation also provides an exempted list of counterparties of which the above requirements do not apply.

(c) Credit Quality Assessment Methodologies

In relation to credit quality assessments carried out by MMF Managers, the Delegated Regulation requires the methodologies to include:

- (i) criteria for validating the internal credit quality assessment methodologies;
- (ii) criteria for quantifying credit risk, and the relative risk of default of the issuer and of the instrument;
- (iii) criteria for establishing qualitative indicators in relation to the issuer of the instrument; and
- (iv) criteria for establishing qualitative credit risk indicators in relation to the issuer of the instrument.

In addition, the Delegated Regulation provides that:

- MMF Managers may take investment decisions that override the result of a credit quality assessment only in exceptional circumstances (such as stressed market conditions), where there is an objective reason for doing so and provided such decisions are properly documented;

- the credit quality assessment should not be a once-off assessment, rather it should be carried out continually and should be revised, in particular, when there is a material change that could have an impact on the existing credit quality assessment of the instrument (the Delegated Regulation also defines the circumstances that give rise to a material change); and
- MMF Managers should take into account a downgrading by a credit rating agency and should also carry out their own assessment according to their internal credit quality assessment methodology. MMF Managers are also required to establish an internal procedure for selection of credit rating agencies suited to the investment portfolio of the MMF.

2. New Central Bank of Ireland Application forms for MMFs

The Central Bank of Ireland (the “Central Bank”) has published its [MMFR Application Forms](#). The relevant application forms are applicable from 21 July 2018 and will apply to all new funds seeking to be authorised as a MMF and those existing funds transitioning under the MMF Regulation.

Timing

For all existing MMFs the transitioning deadline for compliance with the MMF Regulation is 21 January 2019. However, the Central Bank have announced that any transitioning MMFs that require prior document review (i.e. UCITS and RAIFs) should file their updated documents by 1 September 2018 to ensure that they are approved by 21 January 2019.

3. European Securities and Markets Authority (ESMA) letter to the European Commission in relation to share cancellation

On 20 July 2018, ESMA published a [letter](#) it had written to the European Commission in relation to reverse distribution mechanism (RDM) or share cancellation under the MMF Regulation.

The Letter responds to a January 2018 letter from the European Commission in which it agreed with ESMA's analysis that the practice of share cancellation is not compatible with the MMF Regulation.

In its letter, ESMA calls on the Commission to make public the text of an opinion of the Legal Service of the Commission on the compatibility of share cancellation with the MMF Regulation given that it appears the opinion has been shared with some market participants, but not all. ESMA is of the view that the Commission needs to make its interpretation clear to ensure a proper and consistent interpretation and implementation of the MMF Regulation.

4. Central Bank Review of Dealing Practices

For the last number of months the Central Bank has been liaising with MMF managers and administrators, to gather information in relation to the dealing practices used for Irish MMFs, in particular focusing on the use of what is termed 'historic pricing' in such MMFs. It is expected that the Central Bank will clarify its position on the use of such dealing practices shortly given any transitioning MMFs that require prior document review by the Central Bank will need to file updated documents by 1 September 2018.

5. Comment

The publication and entry into force of the Delegated Regulation is to be welcomed as it will provide clarity to MMF Managers in relation to the quantitative and qualitative requirements that apply to assets received under reverse repurchase agreements. In addition, the obligations prescribed in relation to credit quality assessment criteria will assist MMF Managers in drafting fund policies as well as the disclosures in the MMF's offering and constitutive documents.

The publication of the Central Bank application forms is also helpful as it provides a suitable checklist for new and existing funds under the MMF Regulation.

The ESMA letter is an important development as it should encourage the Commission to provide its analysis and reasoning behind its stance on RDM and its compatibility with the MMF Regulation. Developments on this issue will continue to be closely monitored by the industry as it is an extremely sensitive matter for many MMF Managers particularly those managing constant NAV Euro denominated MMFs.

If you have any questions relating to implications of the MMF Regulation, please contact your usual contact at Dillon Eustace.

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