Ireland AWM regulatory update

October 2021 – January 2022

pwc

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The Irish Funds Industry in numbers

€6.5tn
Total assets under administration in Ireland – November 2021

€3.9tn
Total domiciled funds in Ireland – November 2021

€2.6tn
Total non-domiciled funds in Ireland – November 2021

€267bn
Net sales of domiciled funds in 2021 – November 2021

40%
Percentage of hedge funds that Ireland services – November 2021

8,351
Number of funds domiciled in Ireland – November 2021

66%
Ireland's share of European ETFs – November 2021

€3.0tn
Net assets of UCITS in Ireland – November 2021

€951bn
Net assets of AIFs in Ireland – November 2021

Source: EFAMA November 2021
Source: Irish Funds – Industry Statistics: November 2021

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AIFMD - Questions and Answers - 43rd Edition

On 29 October 2021, the Central Bank of Ireland ('CBI') released the 43rd Edition of the Alternative Investment Fund Managers Directive ('AIFMD') Q&A document. This edition contains one update relating to depositary services.

(i) ID 1139

Q: What non-financial instrument assets may a Depositaries of Assets Other than Financial Instruments ('DAoFI') safe-keep?

A: The CBI expects the AIF in respect of which a DAoFI is appointed to materially invest in illiquid assets. The CBI expects these assets to be physical assets which do not qualify as financial instruments under Directive 2011/61/EU or could not be physically delivered to the depositary. It considers that ownership of these assets will generally be represented by documents of title. Currently, the CBI considers that a DAoFI can safe-keep asset classes such as; art, units or shares in collective investment schemes, commodities (physical), companies (private), forestry, infrastructure, intellectual property & income there from (includes royalties), land, life assurance policies, loans, OTC derivatives, plant & equipment, precious stones, real estate, ships, trade claims, wine, and aircraft.

The Q&A is available here.

AIFMD - Questions and Answers - 44th Edition

On 20 December 2021, the Central Bank of Ireland ('CBI') released the 44th Edition of the Alternative Investment Fund Managers Directive ('AIFMD') Q&A document. This edition contains three updates; one relating to investments (ID 1151) and two relating to fees and charges (ID 1152 and ID 1153).

(i) ID 1151

Q: I am a Qualifying Investor Alternative Investment Fund ('QIAIF') operating a private equity strategy or invested in physical assets which do not qualify as financial instruments. What are the CBI's expectations in respect of an arrangement involving a non-discretionary investment advisor which provides services to the QIAIF?

A: An investment advisor may be appointed to provide services to a QIAIF on a non-discretionary basis. This may be appropriate where the expertise of an investment advisor is required, for example with respect to a geographical location or asset type. The role of the investment advisor is to provide relevant expertise in order to enable the AIFM (or investment manager if applicable) to perform their mandate. The CBI understands that in the case of QIAIFs operating private equity strategies or otherwise invested in physical assets which do not qualify as financial instruments, an investment advisor may provide a range of services to the AIFM in respect of that QIAIF. Details to identify the investment advisor and the services provided should be comprehensively disclosed in the QIAIF's prospectus and may include services relating to identification and origination of investment proposals, due diligence and other operational activities relating to the assets or proposed investments of the QIAIF. Services of this nature are not typically provided for in other investment strategies, and as a result the fees paid to non-discretionary investment advisors providing these services appear disproportionately greater than those paid to other service providers of the QIAIF.

(ii) ID 1152

Q: Where an existing Retail Investor AIF has multiple managers or advisers ("multi-manager RIAIF"), can the RIAIF continue to pay a performance fee only on the performance of that part of the portfolio for which the investment manager or adviser is responsible and in respect of which there has been outperformance?

A: The CBI intends to implement Section XV, Question 7 of the ESMA Questions & Answers on the AIFMD. The Application Forms will be updated shortly in this regard. As such, the CBI requires that existing multi-manager RIAIF will have transitioned their current performance fee models into compliance with the European Securities and Markets Authority ('ESMA') Q&A by 1 January 2023 and will have updated their prospectuses accordingly by that time.

(iii) ID 1153

Q: Can a new multi-manager RIAIF be established with a performance fee which does not comply with the performance fee requirements of Section XV, Question 7 of the ESMA Questions & Answers on the AIFMD from the date of establishment?

A: No. From the date of this Q&A the CBI will not authorise new multi-manager RIAIFs that have a performance fee structure which does not comply with the aforementioned ESMA Q&A.

The Q&A is available here.

AIFMD/UCITS - Companies (Corporate Enforcement Authority) Bill 2021

On 22 December 2021, President Higgins signed the The Companies (Corporate Enforcement Authority) Bill 2021 into law.

This Bill paves the way for the establishment of a new independent statutory authority, the Corporate Enforcement Authority ('CEA'), tasked with investigating and prosecuting economic and white collar crime in Ireland. The CEA will replace the Office of the Director of Corporate Enforcement ('ODCE') and assume its role in the investigation and enforcement of corporate crime. The Bill signals the increasing momentum to overhaul the corporate enforcement regime in Ireland.

The Act is available here.

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AML/CFT - Feedback Paper - ISA (Ireland) 240 (Revised October 2021) - The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements

On 13 October 2021, The Irish Auditing and Accounting Supervisory Authority ('IAASA') issued a feedback paper on ISA 240 regarding The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements.

IAASA received 6 responses to the consultation. IAASA confirmed the revisions to ISA (Ireland) 240 are intended to improve the quality of audits in Ireland.

IAASA considers that the revisions clarify the expectations of the auditor in respect of fraud, enhance the requirements of the existing international standard and are consistent with current Irish legislation.Following the consultation and having regard to the responses received, IAASA is adopting ISA (Ireland) 240 (Revised October 2021). The effective date is for audits of financial statements for periods beginning on or after 15 December 2021. Early adoption is permitted.

The Feedback Paper is available here.

AML/CFT - Beneficial Ownership Register FAQ (updated 27 October 2021)

On 27 October 2021, the Central Bank of Ireland ('CBI') issued an updated version of the Beneficial Ownership Register FAQ. There was one update since the previous edition of the document on 20 September 2021 as follows;

Q: How do I find BO information for an entity not on the Beneficial Ownership Register of Certain Financial Vehicles?

A: The CBI publishes, and updates on a monthly basis, the list of Certain Financial Vehicles ('CFV') for whom beneficial ownership information is available on the beneficial ownership register of CFVs, for which the CBI holds responsibility, following the transposition of relevant articles of the European Anti-Money Laundering ('AML') Directives 4 and 5, under S.I. 233 of 2020. Currently, the certain financial vehicles contained on the register managed by

the CBI are; Irish Collective Asset-Management Vehicles ('ICAVs'), unit trusts, credit unions, Investment Limited Partnerships ('ILPs'), and Common Contractual Funds ('CCFs').

S.I. 110 of 2019 transposed relevant articles of 4 AMLD and 5AMLD that require companies and industrial and provident societies to maintain an internal register of their beneficial owners and to file this information with a central register, responsibility for which was conferred on the registrar of companies, under which the register of beneficial ownership operates. S.I. 194 of 2021 transposed relevant articles of 4AMLD and 5AMLD that require a central register of beneficial ownership of trusts to be established, and for which responsibility was conferred on the Revenue Commissioners. Further information in relation to the Register of Beneficial Ownership of Companies and Industrial and Provident Societies is available here. Further information in relation to the central register of beneficial ownership of trusts is available here.

The FAQ document is available here.

AML/CFT - Beneficial Ownership Register FAQ (updated 9 December 2021)

On 9 December 2021, the Central Bank of Ireland ('CBI') issued an updated version of the Beneficial Ownership Register FAQ. There were two updates since the previous edition of the document on 27 October 2021 as follows;

(i) Q: Is there a requirement to include a cessation date (as applicable) for all beneficial owners since our initial filing on 10 Dec 2020?

A: There is no requirement to provide this date for historic beneficial owners. The obligation to report a beneficial owner's date of leaving a Certain Financial Vehicle's ('CFV's') internal register commences on 7 December 2021. For subsequent flings, after the initial filing of the new beneficial ownership template from 7 December 2021, where a beneficial owner is no longer a beneficial owner, that should be reflected by including a cessation date on the beneficial ownership template against that individual. New and continuing (i.e. current) beneficial owners must always be listed on every beneficial ownership template submitted. An outgoing beneficial owner must only be listed once alongside the current beneficial owners in order to record the cessation date on the beneficial ownership register.

(ii) Q: Should all former beneficial owners data be submitted with each return – or is a single submission sufficient which shows the cessation?

A: A beneficial owner should be reported ceased once - alongside all current beneficial owners - within 14 calendar days of the beneficial ownership coming to an end. There is no ongoing requirement to continue to report the ceased status or any other information for that individual from that point forward. Should the same individual become a beneficial owner again in the future for that CFV, they should be included again without a ceased date, alongside all current beneficial owners, until such a time they cease being a beneficial owner.

The FAQ document is available here.

AML/CFT - Anti-Money Laundering Bulletin - Issue 7, Message from Tommy Hannafin - Head of Anti-Money Laundering Division

On 12 November 2021, the Central Bank of Ireland ("CBI") issued an Anti-Money Laundering Bulletin.

The CBI expects Firms to have implemented effective governance, risk and control functions and to be able to demonstrate to the CBI:

i. Sufficient oversight of the Anti-Money Laundering /Counter Financing of Terrorism / Financial Sanctions ('AML/CFT/FS') framework to ensure compliance with the requirements of the Criminal Justice Act ('CJA') 2010;

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ii. The identification and management of ML/TF/FS risks to which they are exposed is an iterative and ongoing cornerstone of the Firm's AML/CFT/FS framework; and

iii. Continual review and assessment of existing processes and procedures to enhance the AML/CFT/FS framework on an ongoing basis, so that firms are well-positioned to respond to emerging risks, legislative changes and regulatory guidance.

The CBI will continue to conduct supervisory engagements with Firms in this sector and expects Firms to be in a position to demonstrate that they have reviewed the findings and expectations detailed in the bulletin and, where gaps/weaknesses are identified by firms, sufficient steps have been taken to remediate the identified gaps/weaknesses.

The AML Bulletin is available here.

Audit - Consultation Paper - Proposal to adopt International Standard on Review Engagements (Ireland) 2410 - Review of Interim Financial Information Performed by the Independent Auditor of the Entity

On 29 October 2021, The Irish Auditing and Accounting Supervisory Authority ('IAASA') issued a consultation paper on the proposal to adopt International Standard on Review Engagements (Ireland) 2410 - Review of Interim Financial Information Performed by the Independent Auditor of the Entity.

The purpose of this consultation paper was to obtain views regarding IAASA's proposal to adopt International Standard on Review Engagements (Ireland) 2410 – Review of Interim Financial Information Performed by the Independent Auditor of the Entity ('ISRE (Ireland) 2410'). The standard sets out the requirements for an auditor when undertaking an engagement to review an audit client's interim financial statements. One of IAASA's objectives is to promote adherence to high professional standards in the auditing profession. Given the withdrawal of ISRE (UK and Ireland) 2410, IAASA considers that it is in the public interest to develop an assurance standard tailored for Irish auditors undertaking reviews of interim financial statements.

The Consultation is available here.

Audit - Feedback Paper - Revision of the Irish Quality Management Standards

On 21 December 2021, The Irish Auditing and Accounting Supervisory Authority ('IAASA') issued a feedback paper on the revision of the Irish Quality Management Standards ('QMS'), following a public consultation. The paper included three updates relating to the revised QMS.

i. International Standard on Quality Management ('ISQM') (Ireland) 1, Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements;

ii. International Standard on Quality Management (Ireland) 2, Engagement Quality Reviews; and

iii. International Standard on Auditing ('ISA') (Ireland) 220 (Revised December 2021), Quality Management for an Audit of Financial Statements.

They will replace International Standard on Quality Control (Ireland) 1 (Revised November 2020) and ISA (Ireland) 220 (Revised November 2020).

IAASA has also made conforming amendments to other standards in line with the changes made by the International Auditing and Assurance Standards Board ('IAASB') and Financial Reporting Council ('FRC').

The standards introduce a new quality management approach that is focused on proactively identifying and responding to risks to quality. The new approach requires a firm to customise the design, implementation and operation of its system of quality management based on the nature and circumstances of the firm and the engagements it performs. It also requires firms to transition to an integrated approach that reflects upon the system of quality management as a whole, rather than individual elements. The benefits of this new approach include:

- A system that is tailored to the nature and circumstances of the firm and the engagements it performs;
- A proactive response by the firm to changing circumstances and proactively managing or mitigating risks, and promoting continual improvement and responsiveness;
- Increased emphasis on monitoring the system as a whole and timely and effective remediation; and
- Improved integration of the components of the system of quality management.

The new standards are effective as of 15 December 2022 and will apply to periods as set out in the table below (early adoption is permitted);

- **ISQM (Ireland) 1:** Systems of quality management in compliance with ISQM (Ireland) 1 must be designed and implemented by 15 December 2022. The evaluation of the system of quality management required by paragraphs 53-54 must be performed within one year following 15 December 2022.
- **ISQM (Ireland) 2:** Effective for audits and reviews of financial statements for periods beginning on or after 15 December 2022; and other assurance or related services engagements beginning on or after 15 December 2022.
- **ISA (Ireland) 220 (Revised December 2021):** Effective for audits of financial statements for periods beginning on or after 15 December 2022.

The Feedback Statement is available here.

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Corporate Governance - Irish Corporate Governance (Gender Balance) Bill 2021

On 6 October 2021, the Government of Ireland ('GoI') initiated the legislation process for the Irish Corporate Governance (Gender Balance) Bill 2021. The Bill contains 5 key gender balance requirements;

i. Corporate bodies within 36 months from the date of commencement of this Act must at all times maintain a gender balance on its board of directors, trustees or governing council, such that the board or governing council is composed of a minimum of 40 per cent of directors, trustees or members of each gender. As a transitional provision to allow corporate bodies time to implement these provisions, this requirement will be limited to a minimum 33 per cent for a period of 12 months from the commencement date.

ii. The Chairman of the board or governing council must make a statutory declaration in the corporate body's annual return or other annual financial statement that the corporate body complies with the gender balance requirement or where he/she is not able to declare, must make a statutory declaration of the reasons why it is noncompliant.

iii. The registrar, minister, governor or regulator may at the request of the corporate body issue a certificate of compliance if satisfied that the corporate body has complied with the gender balance requirement.

iv. Where the registrar, minister, governor or regulator is not satisfied or where a corporate body is otherwise not compliant with the gender balance requirement, application may be made by the registrar, minister, the director, governor, regulator, a director or member of the corporate body, to the High Court for an order directing compliance.

v. This Act will not apply to unincorporated associations, partnerships, limited liability partnerships, single director companies, micro companies, or other corporate bodies that have an annual turnover of less than €750,000 or that employ fewer than 20 employees.

As of the end of January 2022, the Bill is still in the first stage of the legislative process in Dail Eireann.

The Bill is available here.

CRD/CRR - The Central Bank of Ireland's Approach to Resolution for Banks and Investment Firms (Second Edition)

On 20 October 2021, the Central Bank of Ireland ('CBI') released the 2nd Edition of its approach to resolution for banks and investment firms. This approach to resolution document outlines the CBI's resolution mandates, powers and available discretions, its approach to resolution, and its perspectives on resolvability under the following relevant legislation. The first edition was issued in 2019, and this updated version reflects changes introduced following amendments to the legislation.

These amendments included changes to the Single Resolution Mechanism Regulation ('SRMR') and the Bank Recovery and Resolution Directive ('BRRD') since 2019, also known as SRMR2/BRRD2 or the 'Risk Reduction Measures Package'; which have refined resolution regimes in the EU and provided for additional powers and discretions for resolution authorities. National transposition of BRRD2 entered into force from 28 December 2020.

The overall document is structured as follows;

i. Part I: Introduction to the document.

ii. Part II: Broad overview of the resolution framework within which the CBI operates.

iii. Part III: Outline of the CBI's general perspectives on resolvability and resolution planning.

iv. Part IV: Illustration of how the CBI would generally approach a resolution action.

The Guidance is available here.

CRD/CRR - The Central Bank of Ireland's Approach to Minimum Requirement for Own Funds and Eligible Liabilities (MREL) October 2021

On 20 October 2021, the Central Bank of Ireland ('CBI') published its approach to Minimum Requirements for Own Funds and Eligible Liabilities ('MREL'). This approach to MREL document provides an overview of the CBI's powers and discretions as the National Resolution Authority ('NRA') with respect to MREL, subordination, and related matters pursuant to the CBI's mandates under;

i. Regulation (EU) No 806/2014 ('Single Resolution Mechanism Regulations' or 'SRMR');

ii. Directive (EU) 59/2014 ('Bank Recovery and Resolution Directive' or 'BRRD');

iii. European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) ('Bank Recovery and Resolution Regulations' or 'BRR Regulations'); and

iv. Regulation (EU) No 575/2013 ('Capital Requirements Regulations' or 'CRR').

All of the above have been amended at various points in time. Amendments to the SRMR and the BRRD since 2019 ('SRMR2/BRRD2' or the 'Risk Reduction Measures Package') introduced refined MREL and subordination regulatory regimes in the EU with revised statutory minimum requirements in addition to new powers and discretions for resolution authorities. The CBI will consider each of the powers and discretions outlined in this document, as per the relevant legislative basis, on an institution specific basis with due regards to the merits and circumstances of each individual case.

This document provides an overview of regulatory provisions and resolution authority powers and discretions specifically related to MREL, subordination, and related matters under the SRMR, the BRR Regulations (which transpose the BRRD), and the CRR, in particular with regard to setting:

- The external MREL for institutions that are resolution entities and that, if they failed, would be subject to one or more of the resolution tools;
- The MREL for institutions that, if they failed, would be subject to liquidation proceedings;
- The internal MREL for institutions that are not themselves resolution entities and whose ultimate parent would be subject to one or more of the resolution tools; and
- Subordination requirements.

The Guidance is available here.

CRD/CRR - European Union (Covered Bonds) Regulations 2021 [S.I. No. 576 of 2021]

On 10 November 2021, the Government of Ireland ('GoI') published the European Union (Covered Bonds) Regulations 2021 [S.I. 576 of 2021]. This legislation provides for a new EU framework for covered bonds which will come into effect on 8 July 2022. The Regulations give effect to Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 ('Covered Bonds Directive') which enters into force on the same date.

The Covered Bonds Directive creates a uniform framework setting down specific structural features which must be satisfied by bonds issued by EU credit institutions which are to be classified as "covered bonds" under the Undertakings for the Collective Investment in Transferable Securities ('UCITS') framework. The Covered Bonds Directive aims to ensure the seamless and constant development of the covered bonds market in the EU and intends to limit potential risks and vulnerabilities to financial stability. The new covered bonds framework imposes certain conditions relating to composition of the cover pool, eligible cover assets, coverage and liquidity requirements.

The Regulations are available here.

CRD/CRR - Implementation of Competent Authority Options and Discretions in the European Union (Capital Requirements) Regulations 2014 and Regulation (EU) No 575/2013

On 8 December 2021, the Central Bank of Ireland ('CBI') published an intention notice relating to the Implementation of Competent Authority Options and Discretions in the European Union (Capital Requirements) Regulations 2014 and Regulation (EU) No 575/2013. This implementation notice outlines CBI requirements and guidance in relation to the implementation of certain competent authority Options and Discretions (O&Ds) arising under;

- The European Union (Capital Requirements) Regulations 2014 ('the CRD Regulations'), transposing Directive 2013/36/EU ('CRD IV'),
- Regulation (EU) No. 575/2013 ('CRR'); 3 and
- European Commission Delegated Regulation (EU) No. 2015/61 (the 'LCR Regulation').

The document is divided into ten separate sections;

i. Overview: Outlines the purpose of the document.

ii. Transitional Arrangements: Covers the CBI's approaches towards certain O&Ds with transitional elements.

iii. Own Funds: Sets out the CBI's policy with respect to the exercise of certain competent authority discretions in the area of own funds.

iv. Exposures to Immovable Property: Details the CBI's approach to how it exercises discretions with respect to a number of regulations affecting immovable properties.

v. Liquidity: Specifies the CBI's approaches in relation to certain liquidity discretions.

vi. Corporate Governance: Examines the CBI's exercise of discretions arising within the sphere of corporate governance in the CRD Regulations; as well as the interplay between these discretions and the CBI's Corporate Governance Code for credit institutions.

vii. Pillar 3 - Requirements applicable to Subsidiaries: Pending any EU legislation on foot of the November 2016 European Commission proposals to amend aspects of CRD IV and CRR, the CBI considers that a subsidiary that represents 5 per cent or more of group assets and/or has market share in any sector or group of connected sectors which is greater than or equal to 20 per cent, constitutes a significant subsidiary for the purposes of Article 13 of CRR.

vii. MiFID Firms: Provides information on the impact of certain provisions of the CRD Regulations and CRR on MiFID firms and in particular specifies the CBI's approaches towards a number of O&Ds that are relevant for MiFID firms.

viii. Annex 1 - Competent Authority O&Ds in the CRD Regulations.

ix. Annex 2 - Competent Authority O&Ds in CRR.

This implementation notice supersedes the CBI's May 2014 implementation notice and may be periodically updated from time-to-time.

The Guidance is available here.

Crowdfunding - Central Bank announces new crowdfunding regulatory regime

On 13 January 2022, the Central Bank of Ireland ('CBI') announced the introduction of a new regulatory regime for crowdfunding service providers under EU Regulation. The CBI has been designated the competent authority for crowdfunding

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regulation in Ireland. While crowdfunding brings new funding possibilities for businesses and new opportunities for investors, it is important that investors are appropriately protected and well informed as to the potential risks. A number of provisions of the Consumer Protection Code 2012 will now apply to advertising by crowdfunding service providers in Ireland. Amongst other requirements, any advertisement must be fair and clear and must not mislead or seek to influence consumers unduly in their investment decisions.

Crowdfunding service providers must display a prominent warning message on all advertisements that investment in crowdfunding projects entails risks, including the risk of partial or entire loss of the money invested; and that any investment is not covered by a deposit guarantee scheme or by an investor compensation scheme. There are two main types of crowdfunding that are covered by this crowdfunding regulation - investment-based crowdfunding and peer-to-peer/loan based crowdfunding. The new framework will require in-scope crowdfunding service providers to be authorised and they will be subject to operational and prudential requirements as well as investor protection measures.

The Statement is available here.

Distribution - Notice of intention in relation to the application of the ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds

On 1 October 2021, the Central Bank of Ireland ('CBI') issued a notice of intention relating to the European Securities and Markets Authority ('ESMA') guidelines on marketing communications under the regulation on cross-border distribution of funds (ESMA34-45-1272) which was published on 2 August 2021.

The Notice is available here.

CBI Taxonomy - XBRL File Upload Guidance Document - V1.0 - July 2021

On 14 October 2021 the Central Bank of Ireland ("CBI") issued a guidance document relating to XBRL file upload.

The document is a guide for users who will be submitting XBRL files to the CBI via the online reporting system under the new taxonomy 2.0. The document encompasses the process of uploading as well as the 'Finalising' and 'SignOff' of individual returns. Screenshots included in the guidance document provide clear step by step instructions.

The Guidance is available here.

ESG - Supervisory expectations of regulated firms regarding climate and other ESG issues

On 3 November the Central Bank of Ireland ("CBI") issued a letter from the Governor relating to Supervisory expectations of regulated firms regarding climate and other ESG issues.

The CBI supervisory expectations focus on five key areas:

- Governance: firms need to demonstrate clear ownership by their Boards of climate risks affecting the firm and to promote a culture that places emphasis on climate and other ESG issues;
- Risk management framework: firms need to understand the impact of climate change on the risk profile of the firm and to enhance their existing risk management frameworks to ensure robust climate risk identification, measurement, monitoring and mitigation;
- Scenario analysis: scenario analysis and stress testing are critical to assess the impact of potential future climate outcomes, including impacts on capital adequacy, where applicable;
- Strategy and business model risk: firms are expected to undertake business model analysis to determine the impacts of climate risks (and opportunities) on the firm's overall risk profile, business strategy and sustainability, and to inform strategic planning; and
- Disclosures: existing legal requirements on disclosure emphasise the importance of transparent disclosure to consumers and investors to protect their interests and wider market integrity. In particular, firms need to ensure they do not engage in the practice of 'greenwashing'.

The Dear CEO letter is available here.

CBI - Strategy 2022

On 5 November 2021 the Central Bank of Ireland ("CBI") issued its Strategy document.

The strategy contains four connected themes as follows:

- Future Focused - Being Future-Focused is critical to enabling the CBI to better understand, anticipate and adapt in the context of the far-reaching changes taking place within the financial services industry, with a particular emphasis on technological innovation, climate transition, geo-political change, and developments arising in the context of the COVID-19 pandemic.
- Open and Engaged - It is a critical priority for the CBI to listen to their stakeholders, building dialogue and learning, so that they can contribute to building trust in the financial system and foster a wider understanding of the CBI's role.
- Transforming -The focus of the CBI is on an ambitious reimagining of how our organisation operates, with an emphasis on effectiveness and increased agility, in a new hybrid-working model.

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The role of data and technology in driving effective and efficient processes and supporting our people to deliver on their roles is central to this. The transforming theme functions as an enabler of the overall strategy.

- Safeguarding - Safeguarding reflects the CBI's steadfast commitment to strengthen the design, implementation and operation of their core policy and supervisory frameworks.

A key focus of the strategy is the development of specific measures to more directly monitor the achievement of our target outcomes. The CBI reports on its annual performance in relation to all aspects of its work in the published annual report and annual performance statement, through which stakeholders will have the means to assess the progress in achieving the strategic goals and target outcomes.

The Strategy document is available here.

ESG - Notice of Intention - Process clarifications for UCITS and AIFs pre-contractual documentation updates in relation to the Taxonomy Regulation and Level 2 measures in relation to the Sustainable Finance Disclosure Regulation

On 16 November 2021, the Central Bank of Ireland ('CBI') produced a notice of intention regarding process clarifications for UCITS and AIFs pre-contractual documentation updates in relation to the Taxonomy Regulation and Level 2 measures in relation to the Sustainable Finance Disclosure Regulation ('SFDR').

In order to facilitate orderly implementation of the requirements SFDR and the Taxonomy Regulation, the CBI has established a fast-track filing process for pre-contractual document updates based on the Taxonomy Regulation and the SFDR Level 2 text, under which both UCITS management companies and AIFMs ('Managers') will be required to certify compliance with the requirements via an attestation.

The responsibility rests with the relevant Manager to ensure compliance with the applicable requirements. Importantly, the fast-track regime should not be seen as providing scope for a lesser quality of disclosures than would otherwise be produced. Please be aware that, whilst a noting/confirmation of receipt will be issued following the submission of each update, the CBI intends to undertake a review of a sample of the submissions received and will engage with those selected applicants on a bilateral basis where queries arise in respect of the applications that fall within the sample. As such, notwithstanding the noting / confirmation issued, the CBI may require revisions to documentation to be made at a later date.

The Notice is available here.

Financial Reporting - IAASA publishes Information Note "Applying IFRS 9 Financial Instruments - expected credit losses"

On 11 January 2022, the Irish Auditing and Accounting Supervisory Authority ('IAASA') published an information note titled "applying IFRS 9 financial instruments - expected credit losses".

FRS 9 Financial Instruments, which sets out an impairment model based on an expected credit loss (ECL) model for financial instruments, became effective in 2018.

Since its first application, IAASA has examined how banks have applied the key judgements in IFRS 9. IAASA's Information Note is based on observed trends in the application of IFRS 9 by banks and, in particular, since the start of the COVID-19 pandemic. The key messages in the Information Note are;

i. Users of banks' financial reports should carefully review and analyse the totality of Expected Credit Loss ('ECL') information disclosed by banks and, in particular, information about material post-model adjustments (management overlays), judgements surrounding significant increase in credit risk, and changes to forward looking information, ECL allowances and ECL sensitivity.

ii. IAASA encourages banks to provide more entity-specific and granular quantitative and qualitative expected credit loss information to users of their reports.

iii. IAASA encourages banks to strive for further improvements to the level of transparency for the topics identified in the information note.

iv. IAASA expects that as COVID-19 pandemic relief measures and supports are withdrawn (and the longer-term impact of the pandemic on banks' ECLs become more apparent) additional disclosures and greater transparency of these impacts on ECLs will be disclosed in banks' financial reports.

The Information Note is available here.

CBI Funding - Funding Strategy and Guide to the 2021 Industry Funding Regulations

On 21 October 2021 the Central Bank of Ireland ("CBI") issued the Funding Strategy and Guide to the 2021 Industry Funding Regulations.

This publication is intended to provide a guide to the Industry Funding Regulations for 2021 which have been set to recover industry's share of 2020 Financial Regulation costs. The guide is divided into six sections as follows;

- Section 1: Funding Strategy
- Section 2: Background to the 2021 Industry Funding Regulations
- Section 3: Recovery Rates
- Section 4: Calculation of the Industry Funding Levy for each industry category

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- Section 5: Financial Information for Industry Sectors
- Section 6: Appendices

The Guide is available here.

IFD/IFR - Implementation of Competent Authority Discretions in the European Union (Investment Firms) Regulations 2021 and Regulation (EU) No 2019/2033

On 1 November 2021, the Central Bank of Ireland ('CBI') produced an implementation notice relating to competent authority discretions. Specifically, this implementation notice sets out the CBI's requirements and guidance in relation to the implementation of certain competent authority discretions arising under;

- S.I. No. 355 of 2021, European Union (Investment Firms) Regulations 2021 (the IFD Regulations) transposing Directive (EU) 2019/2034 on the prudential supervision of investment firms (the IFD) into Irish law;
- Regulation (EU) 2019/2033 on the prudential requirements of investment firms (the IFR) and S.I. No 356 of 2021, European Union (Investment Firms) (No. 2) Regulations 2021 (the IFR Regulations).

Key discretions discussed in this paper relate to the prudential regime applicable to larger Markets in Financial Instruments Directive ('MiFID') investment firms to ensure such firms are subject to appropriate prudential requirements, to the application of the new liquidity risk requirements and to requirements relating to the assessment of internal capital of smaller MiFID investment firms. Discretions specifically related to the practical implementation of the new prudential regime for MiFID investment firms are also discussed.

The notice is structured as follows;

i. Section 1 contains an introduction and background to the document.

ii. Section 2 details the CBI's policy in respect of the discretion to apply the CRD IV/CRR regime to MiFID investment firms in certain circumstances.

iii. Section 3 details the CBI's policy in respect of the discretion to require Class 3 MiFID investment firms to perform an assessment of internal capital and liquid assets.

iv. Section 4 details the CBI's policy in relation to specific liquidity discretions.

v. Section 5 details the CBI's policy in relation to discretions to make adjustments to K-Factors under certain circumstances.

vi. Section 6 details the CBI's policy in relation to specific variable remuneration discretions.

vii. Appendix I lists competent authority discretions in the IFD Regulations.

viii. Appendix II lists competent authority discretions in IFR and, by reference, CRR.

The Notice is available here.

Investment Reporting - IAASA has published a Consultation Paper on its proposals to adopt Standards for Investment Reporting ('SIRs') in Ireland

On 19 January 2022, the Irish Auditing and Accounting Supervisory Authority ('IAASA') published a Consultation Paper on its proposals to adopt Standards for Investment Reporting ('SIRs') in Ireland.

The purpose of this consultation paper is to obtain stakeholders' views about IAASA's proposal to adopt SIRs. The SIRs will set requirements and provide guidance for reporting accountants performing engagements in connection with an investment circular in Ireland. It is proposed to issue the six SIRs (Ireland) listed below.

i. SIR (Ireland) 1000 - Investment reporting standards applicable to all engagements in connection with an investment circular.

ii. SIR (Ireland) 2000 - Investment reporting standards applicable to public reporting engagements on historical financial information.

iii. SIR (Ireland) 3000 - Investment reporting standards applicable to public reporting engagements on profit forecasts.

iv. SIR (Ireland) 4000 - Investment reporting standards applicable to public reporting engagements on pro forma financial information.

v. SIR (Ireland) 5000 - Investment reporting standards applicable to public reporting engagements on financial information reconciliations under the listing rules.

vi. SIR (Ireland) 6000 - Investment reporting standards applicable to public reporting engagements on quantified financial benefits statements The proposed effective date of the SIRs (Ireland) is for reporting accountant engagements commencing on or after 15 September 2022, with early adoption permitted.

The Consultation Paper is available here.

MiFID II/MiFIR - Monthly Metrics Report - Guidance Note for Irish Investment Firms

On 21 October 2021, the Central Bank of Ireland ('CBI') released its monthly metrics report - guidance note for Irish investment firms. The Monthly Metrics Report is applicable to all investment firms authorised under S.I. No. 375 of 2017, the European Union (Markets in Financial Instruments) Regulations 2017 (as amended) ('MiFID investment firms"') and certain investment business firms authorised under the Investment Intermediaries Act, 1995 ('IIA Non-Retail firms'). Throughout the guidance document, these firms will be collectively referred to as "Irish investment firms" or simply "firms". It should be noted that the monthly metrics report is not applicable to retail intermediaries authorised under the Investment Intermediaries Act, 1995.

This guidance note provides direction on how to complete the monthly metrics report

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and specifies definitions for the fields contained within the return. It may be updated periodically and the most up-to-date version will be available on the CBI website. Firms should submit the monthly metrics report each month to the CBI via the Online Reporting System ('ONR') twenty working days from the previous month's end. If firms have any queries in relation to the monthly metrics report or the content of this guidance note, they should contact their usual supervisor.

The Guidance Note is available here.

MiFID II/MiFIR - Dear CEO Letters - Common Supervisory Action on MiFID II Suitability Requirements

On 1 December 2021 the Central Bank of Ireland ("CBI") published the Letter from Sandra Shanley, Head of the Consumer Protection - Investment Firms and Client Assets Division function relating to the Common Supervisory Action on MiFID II Suitability Requirements.

Throughout 2020, the CBI undertook a review of Firms' compliance with the suitability requirements in the European Union's Markets in Financial Instruments Directive (MiFID II). Some of the key findings are as follows;

- Firms need to adopt a client-focused approach
  - The CBI's overarching concern is that Firms have failed to establish a risk-based and client-focused approach to suitability that prioritises positive outcomes for clients and puts the necessary safeguards, procedures and controls in place to ensure clients' best interests are protected.
- Firms must improve their assessment of clients' knowledge and experience, financial situation and investment objectives
  - A key element of the MiFID II requirements is the need for Firms to collect all necessary information to enable Firms to recommend to the client or potential client the investment services and financial instruments that are suitable. It is critical that Firms conduct a holistic assessment of all client circumstances to make a fair and balanced recommendation, and this must be clearly evidenced in Firms' records and files.
- Suitability Reports need to be sufficiently detailed and personalised
  - Transparency and effective disclosure is key to enabling investors to make informed decisions. The suitability report, which was introduced under MiFID II, should be a personalised document that enables the investor to understand how and why a product has been deemed suitable for them, based on their individual circumstances.
- Controls on 'Exception' Processes need to be stricter
  - The CBI is particularly concerned at the quality of oversight of 'exception' processes, whereby a client insists on proceeding with the transaction at their own initiative, against the Firm's suitability advice. In such a case, the client should be clearly informed that the transaction is not considered by the Firm to be suitable, including a clear explanation of the potential risks involved by proceeding to trade.

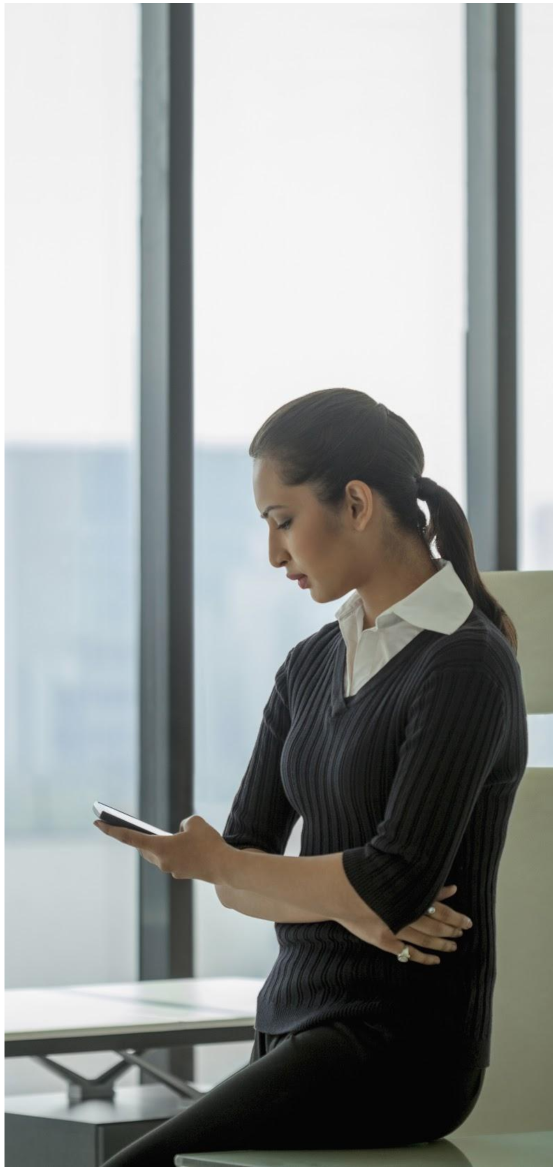
The Dear CEO Letter is available here.

MiFID II/MiFIR -European Union (Markets in Financial instruments) (Amendment) Regulations 2022 [S.I. No. 6 of 2022]

On 12 January 2022, the Government of Ireland ('GoI') published the European Union (Markets In Financial Instruments) (Amendment) Regulations 2022 [S.I. No. 6 of 2022].

These Regulations give effect to Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021, the Capital Markets Recovery Package ('CMRP'). The CMRP is a package of measures that sets out targeted amendments to financial services frameworks to support economic recovery in the aftermath of Covid-19 crisis. Amendments to Directive 2014/65/EU, the Markets in Financial Instruments Directive ('MiFID II'), include simplifying information requirements in a targeted manner while safeguarding investor protection.

The Regulations are available here.



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MMFR - Money Fund Regulation (MMFR) Reporting - Reporting requirements for Fund Management Companies of Irish Authorised Money Market Investment Funds - Vol 9.0

On 22 November 2021, the Central Bank of Ireland ('CBI') published the ninth volume of the - reporting requirements for Fund Management Companies ('FMCs') of Irish authorised money market investment funds. This Guidance note is relevant for all Irish authorised money market investment funds ('MMFs') authorised under Regulation (EU) 2017/1131 ('EU Money Market Funds Regulation') ('MMFR'); and FMC ('Fund Managers') of MMFs. The purpose of this Guidance is to provide information and direction on the completion of "MMF Reporting" by fund managers within the following four categories;

i. The "Money Market Fund Returns" for authorised MMFs under Article 37 of the MMFR;

ii. Ad-hoc stress test reporting under Article 28 of the MMFR;

iii. Other ad-hoc reporting under MMFR outside of points i. and ii.;

iv. Daily Reporting for MMFs.

All MMFR Reporting is made through the CBI's Online Reporting ('ONR') portal unless stated otherwise in this Guidance. The reported data will be used for supervisory purposes by the CBI and where specified in this Guidance for onward transmission to the European Securities and Markets Authority ('ESMA') for their use as specified in the MMFR. Therefore, it is important that fund managers ensure that data quality is of the highest standard.

The Guidance Note is available here.

MMFR - Market Based Finance Monitor 2021

On 15 December 2021, the Central Bank of Ireland ('CBI') issued the Market-Based Finance Monitor. The aim of this new publication is to monitor - in a systematic way - activities and balance sheet trends in the Irish MBF sector that could point to potential financial vulnerabilities. Given the changing nature of financial intermediation - and Ireland's role as a financial centre - systematic monitoring of the sector is a core element of the CBI's approach to safeguarding financial stability. This new publication complements other monitoring reports - to which the CBI already contributes - by the Financial Stability Board, at a global level, and the European Systemic Risk Board, at a European level. In that context, over the past year, the most notable trends in the Irish MBF sector include;

- Rapid growth in the size of the sector has continued, especially in investment funds, largely due to a strong rise in valuations of financial assets globally, but also reflecting continued inflows into the sector.
- There has been some reduction in measured leverage within those investment fund segments that are most highly leveraged.
- There has been an improvement in the liquidity position of money market funds (MMFs) following the early COVID-19 market disruption, which has persisted. Among other investment funds, the share of liquid assets has remained broadly unchanged.
- There has been no marked change in the riskiness of investment funds' fixed income exposures, despite the continued low interest rate environment.
- There has been continued growth in Collateralised Loan Obligations ('CLO') vehicles domiciled in Ireland, partly due to a relocation of some of these entities from the Netherlands.

The Monitor is available here.

Operational Resilience - Feedback Statement - Consultation Paper 140: Cross Industry Guidance on Operational Resilience

On 2 December 2021, the Central Bank of Ireland ('CBI') issued a feedback statement on the consultation paper 140: cross industry guidance on operational resilience which outlined the CBI's proposed approach and perspectives in relation to how the financial sector should prepare for respond and adapt to, and recover and learn from, an operational disruption that affects the delivery of critical or important business services.

Stakeholders were invited to provide feedback on the proposals and to comment on whether the guidelines included the key elements necessary for effective operational resilience, and whether there are the other areas that should be covered in the proposals or in future guidance. Sixteen responses were received from stakeholders, including regulated financial service providers ('RFSP's), representative bodies, industry consultancies, and third service providers, over a three-month consultation period from 9 April to 9 July 2021.

Respondents generally welcomed the consultation and agreed that the Guidance includes the core elements of an effective operational resilience framework. They acknowledged that the Guidance represents a reasonable and pragmatic approach to operational resilience for financial entities, and is presented in a clear and structured manner. While the feedback related to a number of sections within the Guidance, the majority of the comments revolved around the following themes;

i. Proportionality;

ii. International Alignment;

iii. Governance and Board Ownership;

iv. Critical or Important Business Services;

v. Mapping of Outsourced Service Providers (OSPs);

vi. Impact Tolerances and Metrics; and

vii. Scenario Testing.

The Feedback Statement is available here.

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Operational Resilience - Cross Industry Guidance on Operational Resilience

On 2 December 2021, the Central Bank of Ireland ('CBI') published its cross industry guidance on operational resilience.The objective of this Guidance is to communicate to industry how to prepare for, respond to, recover and learn from an operational disruption that affects the delivery of critical or important business services. The CBI believes that a flexible, pragmatic and proportionate approach to operational resilience will strengthen the industry's ability to respond to and recover from such events. The Guidance aims to enhance operational resilience and recognise the interconnections and interdependencies, within the financial system, that result from the complex and dynamic environment in which firms operate. More specifically, the purpose of the Guidance is to;

- Communicate to the boards and senior management of Regulated Financial Service Providers ('RFSP's), the CBI's expectations with respect to the design and management of operational resilience;
- Emphasise board and senior management responsibilities when considering operational resilience as part of their risk management and investment decisions; and
- Require that the boards and senior management take appropriate action to ensure that their operational resilience frameworks are well designed, are operating effectively, and are sufficiently robust. This should ensure that the risks to the firm's operational continuity do not transmit into the financial markets and that the interests of the customers and market participants are safeguarded during business disruptions.

The Guidance does not purport to address, in detail, every aspect of a firm's legal and regulatory obligations relating to operational resilience and should be read in conjunction with the relevant legislation, regulations, and other guidance or standards issued by the relevant industry bodies, supervisory authorities or the CBI. The Guidance does not supersede existing sectoral legislation, regulations, or guidance but is intended to complement and support them. The CBI may update or amend the Guidance from time to time, in light of future regulatory requirements.

The Guidance is available here.

Outsourcing - Feedback Statement - Consultation Paper 138: Cross-Industry Guidance on Outsourcing

On 20 December 2021, the Central Bank of Ireland ('CBI') issued the feedback statement on Consultation Paper 138: Cross-Industry Guidance on Outsourcing which outlined the CBI's expectations regarding the management of outsourcing risk with a view to promoting higher standards of operational resilience in regulated financial service providers (RFSPs or firms).

Stakeholders were invited to provide feedback on the Guidance during the consultation period.In the Feedback Statement, the CBI responded to the most material and consistently raised aspects of the twenty-one consultation responses received. The following topics were identified as those where feedback, amendment or further clarification was warranted;

- Alignment with existing guidance from the European Supervisory Authorities (ESAs)
- The Principle of Proportionality
- Application of the Guidance to branches and the funds sector
- Intragroup Arrangements Sub-Outsourcing Contractual Arrangements and SLAs
- Disaster Recovery, Business Continuity Management & Exit Strategies
- Audit and Access Rights
- Concentration Risk
- Offshoring
- Board Oversight

Having reviewed the feedback and taken on board a number of constructive comments and suggestions the CBI has made some specific revisions to the Guidance, which is published together with this Feedback Statement.

The Feedback Statement is available here.

Outsourcing - Cross-Industry Guidance on Outsourcing

On 21 December 2021, the Central Bank of Ireland ("CBI") published the Cross-Industry Guidance on Outsourcing.

The CBI is strongly focused on outsourcing due to its increasing prevalence across the financial services sector and its potential, if not effectively managed, to threaten the operational resilience of financial service providers regulated by the CBI ('regulated firms') and the Irish financial system. Robust and effective outsourcing risk management within regulated firms supports the financial and operational resilience of these firms and consequently facilitates financial stability aims.

Regulated firms are expected to have effective governance, risk management and business continuity processes in place in relation to outsourcing, to mitigate potential risks of financial instability and consumer detriment. The guidance set out in the document is designed to assist regulated firms in developing their outsourcing risk management frameworks to effectively identify, monitor and manage their outsourcing risks. The CBI's supervisory framework will apply a risk-based approach to assess the effectiveness of regulated firms' governance and management of outsourcing arrangements and their adherence to and implementation of the guidance.

The Guidance is available here.

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Payment & Electronic Money Firms - Dear CEO letter regarding Supervisory Expectations for Payment and Electronic Money (E-Money) Firms

On 9 December 2021, the Central Bank of Ireland ('CBI') issued a Dear CEO Letter relating to supervisory expectations for payment and electronic money (e-money) firms. The purpose of this letter is to clearly set out the CBI's expectations for all payments and e- money firms, and additionally the actions expected to be undertaken by Boards and senior management to ensure your firm is in compliance, on an ongoing basis, with its regulatory requirements and any conditions imposed on your firm's authorisation. The CBI has highlighted some items which are a priority and are intrinsically linked to its high level expectations;

i. Governance and Risk Management: Payment and E-Money firms are required to maintain governance arrangements, control mechanisms and procedures that are proportionate and appropriate in accordance with the Electronic Money Regulations ('EMR') and Payment Services Regulations ('PSR').

ii. Conduct & Culture: The CBI expects firms to embed a consumer-focused culture. In this regard, firms must have robust internal systems and controls, including well developed risk management frameworks in place. It is important that firms design and sell products that are suitable to their customers' needs, are capable of delivering the promised benefits and that any key risks to those products are disclosed.

iii. Safeguarding: The safeguarding of customer funds is a key supervisory priority, given the potential for consumer detriment if a firm has not adequately safeguarded customer funds. Firms must have robust, Board approved, safeguarding risk frameworks in place which ensure that relevant client funds are appropriately identified, managed and protected on a day-to-day basis; this includes the clear segregation, designation and reconciliation of client balances.

iv. Business Model & Financial Resilience: The CBI expects firms to have capital accretive business models that are viable and sustainable. Firms must have sufficient financial resources in place to support current and projected business plans, with due regard given to potential firm specific and wider market stress scenarios. Firms must understand and meet their own funds requirements at all times, with sufficient regulatory capital available to absorb losses.

v. Operational Resilience: The importance of operational resilience has been reinforced by the experience of the immediate shock from COVID-19 and the ongoing shift in consumer behaviours and change in working practices. The CBI, in the context of its strategic commitment to 'strengthening resilience' is focused on ensuring that the financial system continues to address existing vulnerabilities and weaknesses and mitigates risks to ensure that it can better withstand future shocks and crises.

vi. Financial Crime: Payment and E-Money firms are classified as a designated person under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (CJA 2010). As a designated person, firms are subject to the obligations of the CJA 2010, and in particular, the obligations set out in Part 4.

vii. Resolution & Wind-Up: It is expected that where failure arises, the insolvency process can be managed in an orderly fashion without customer detriment. It is the CBI's expectation that firms embed this principle within their business model and operational strategy. Firms are expected to have an appropriate exit/wind-up strategy which is linked to their business and operational model and considers, inter alia, the return of customer funds as soon as is reasonably practical in an exit/wind-up scenario.

The CBI expects CEOs and Boards to complete a comprehensive assessment of their firm's compliance with the following key legislative and regulatory requirements; the firm's safeguarding obligations under Regulation 17 of the PSR and Regulation 29-31 of the EMR, and the conditions of your authorisation. The CBI expects the Board to oversee this review and to consider the conclusions and any remediation actions emanating from it. A Board approved attestation confirming the completion and conclusion of this assessment must be provided to the CBI by 31 March 2022. If any issues are identified as part of this review, a Board approved remediation plan must be put in place which ensures timely resolution of the issues.

The Dear CEO Letter is available here.

Property Funds - CP145 - Macroprudential measures for the property fund sector

On 25 November 2021, the Central Bank of Ireland ('CBI') published a consultation paper regarding macroprudential measures for the property fund sector ('CP145'). CP145 contains a proposal to introduce macroprudential limits on leverage and to provide Guidance to limit liquidity mismatch for Irish-authorised property funds (subject to AIFMD). The policy aims to safeguard the resilience of Irish property funds so that the sector is better able to absorb, rather than amplify, adverse shocks in future times of stress. This in turn will better equip the sector to continue to serve its purpose as a valuable and sustainable source of funding for economic activity.

The consultation is open to everyone and the CBI are seeking views and feedback from all relevant stakeholders on the proposed measures. Where possible it would welcome evidence to support the views submitted in response to this consultation. The public consultation process will be open for submissions via its online response form until Friday, 18 February 2022.

The Consultation is available here.

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Prospectus Regulation - Feedback Statement - Consultation Paper 142 Consultation on Prospectus Fees and Service Standards

On 16 December 2021, the Central Bank of Ireland ("CBI") issued the feedback statement on Consultation Paper 142 Consultation on Prospectus Fees and Service Standards (CP142).

CP142 sought to elicit views on the following matters:

i. Funding the cost of prospectus approval activities - the proposals on the manner in which the CBI funds its prospectus approval activities , including the proposal on the manner in which the CBI will implement the strategy of moving towards full industry funding; and

ii. Prospectus approval service standards - the proposals to revise the current prospectus approval service standards set out in the Central Bank's Regulatory Service Standards Performance Report.

Several respondents made a number of general comments including the following:

i. Ireland is a leading jurisdiction for issuing and listing debt securities . This sector is an important and integral part of the international financial services ecosystem.

ii. Debt listing is a competitive and mobile industry sector. Issuers have a choice of where to list their securities (i.e. other European jurisdictions, non-European jurisdictions, regulated markets and non-regulated markets) and their decision can be dependent on many factors including cost, certainty of timing and ease of process.

iii. It is critically important to maintain Ireland's competitiveness with other jurisdictions.

iv. An increase in prospectus fees, together with the extended prospectus approval service standards, will cause issuers to choose other jurisdictions for issuing and listing their debt securities. This will lead to reduced fee revenue for the CBI.

v. Proposals will negatively impact the business of stakeholders involved in this sector and the financial services industry in Ireland more generally.

vi. Proposals are not in line with the Irish Government's "Ireland for Finance" strategy and its vision for Ireland to be a global leader in sustainable finance by 2025.

The Feedback Statement is available here.

Remuneration - Withdrawal of Policy Statement - EBA Remuneration Guidelines: The Central Bank of Ireland's approach to proportionality relating to the pay-out process applicable to variable remuneration dated 31 January 2017

On 17 January 2022, the Central Bank of Ireland ('CBI') produced a withdrawal of policy statement regarding the European Banking Authority ('EBA') Remuneration Guidelines: the CBI's approach to proportionality relating to the pay-out process applicable to variable remuneration dated 31 January 2017.

The original policy statement clarified the CBI's approach to proportionality relating to the pay-out process applicable to variable remuneration for Irish Less Significant Institutions and CRD IV Investment Firms. Statutory Instrument (S.I.) 158/2014 has been amended by S.I. 710/2020. The amendments relating to remuneration came into operation on 29 December 2020. The amendments include the introduction in Regulation 82(10) of prescribed exemptions from specified variable remuneration principles, and associated requirements, relating to the components and deferral of variable remuneration - without the need to apply to the CBI - provided the criteria in Regulation 82(10) are satisfied.

As a result of the amendments, the CBI will withdraw its 2017 Policy Statement with immediate effect. In the event of queries, firms should contact a member of their supervisory team.

The Statement is available here.

Risk - Systemic Risk Pack December 2021

On 16 December 2021, the Central Bank of Ireland ('CBI') issued its systematic risk pack 2021. The purpose of the Systemic Risk Pack ('SRP') is to facilitate discussion on the systemic risk environment. The SRP is a core part of the CBI's assessment of the current risk landscape, the outcome of which informs the preparation and drafting of the Financial Stability Review ('FSR'). The SRP is currently published annually, on the CBI's website, to coincide with the publication of the second FSR of the year. The contents of the pack are as follows;

i. An update of the SRP heatmaps. The layout of the heatmaps have been redesigned to better align the contents with the structure of the Financial Stability Review. The indicators are grouped around three categories of risk;

   a. Cyclical risk,
   b. Structural risk, and
   c. Real-estate risk.

ii. Some detail on the background to the SRP, and

iii. A glossary of the indicators included in the heatmaps. Content reflects data available on - or before - 5 November 2021.

The Systematic Risk Pack is available here.

Stakeholder Engagement - Feedback Statement - Consultation Paper 136 - Enhancing our Engagement with Stakeholders

On 11 November 2021, the Central Bank of Ireland ("CBI") issued the feedback statement on enhancing their engagement with Stakeholders ('CP136').

While the CBI intend to continue their existing engagements in the future, they recognise that they can further enhance how they engage with their broad range of stakeholders by creating an engagement structure, and, in doing so, create additional opportunities and facilities for the CBI to listen to their stakeholders.While the CBI intend to continue their existing engagements in the future, they recognise that they can further enhance how they engage with their broad range of stakeholders by creating an engagement structure, and, in doing so, create additional opportunities and facilities for themselves to listen to their stakeholders.

Current engagement structures that stakeholders have established with the CBI will continue; including ad hoc sector specific meetings, bilateral engagements with industry and business representatives and our engagement with the public. The CBI will also continue the mechanisms for relevant stakeholders to provide views and input into upcoming regulatory and policy changes through current and enhanced engagement structures and through the consultation process. They also intend on establishing additional engagement initiatives to foster engagement with stakeholders on specific themes or topics, for example, on climate risk.

18 responses were received to the consultation paper on the following proposal topics;

- Enhancing engagement with civil society and with consumer representatives
- Industry engagement
- Financial system conference
- Engagement with business representatives and the wider economy

The Feedback Statement is available here.

Taxation - Public Consultation on the transposition of Directive (EU) 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

On 20 December 2021, the Department of Enterprise, Trade, and Employment issued a public consultation on transposition of Directive (EU) 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

The new directive aims to enhance the corporate transparency by requiring multinational companies with revenue of more than €750 million to disclose publicly in a specific report the income tax they pay. For the first time, non-European multinationals doing business in the EU through subsidiaries and branches will also have to comply with the same reporting obligations as EU multinational undertakings. The reporting will take place within 12 months of the date of the balance sheet for the financial year in question and stipulates who bears responsibility for ensuring compliance with the reporting obligation. The Directive allows two policy options for Member States to consider when transposing into national law, and these two options are the focus of this consultation. However, respondents are free to address any related issues in their submissions. Directive 2021/2101/EU must be incorporated into Irish national law by 22 June 2023. It will apply to all undertakings that fall within the scope of the Directive.

The deadline for submissions is Friday, 18 February 2022. Submissions should be sent using the accompanying Response Template by email, to the email address available here.

The Consultation is available here.

UCITS - Questions and Answers - 35th Edition

On 29 October 2021, the Central Bank of Ireland ('CBI') released the 35th Edition of the Undertakings for the Collective Investment in Transferable Securities ('UCITS') Q&A document. This edition contains two updates relating to the European Securities and Markets Authority ('ESMA') Guidelines on marketing communications under the Regulation on cross-border distribution of funds.

(i) ID 1102

Q. Does the use of the shorter disclaimer as per paragraph 8 of the ESMA marketing guidelines fulfill the requirements of Regulation 54(3) of the CBI's UCITS Regulations?

A: Yes. Regulation 54(3) of the CBI's UCITS Regulations provides that an advertisement relating to a UCITS shall refer to the key investor information document and the prospectus issued by the relevant UCITS. Similarly paragraph 7 of the ESMA Guidelines provides that marketing communications should include a disclaimer.

(ii) ID 1103

Q: Does the statement set out in paragraph 47 of the ESMA Marketing Guidelines satisfy the requirement of Schedule 6(11) of the CBI's UCITS Regulations?

A: Yes. Paragraph 47 of the ESMA Guidelines requires the following statement when information on past performance is presented: "Past performance does not predict future returns". Schedule 6 of the CBI's UCITS Regulations sets out a similar warning with respect to past performance, however the wording is not identical. The CBI considers that the statement as per paragraph 47 of the ESMA Marketing Guidelines satisfies the requirements of Schedule 6(11) of the CBI's UCITS Regulations.

The Q&A is available here.

UCITS - Questions and Answers - 36th Edition

On 20 December 2021, the Central Bank of Ireland ('CBI') released the 36th Edition of the Undertakings for the Collective Investment in Transferable Securities ('UCITS') Q&A document. This edition contains two updates relating to fees and charges.

(i) ID 1105

Q: Where an existing UCITS has multiple managers or advisers ("multi-manager UCITS"), can a responsible person continue to pay a performance fee only on the performance of that part of the portfolio for which the investment manager or adviser is responsible and in respect of which there has been outperformance?

A: The CBI intends to implement Section XI, Question 5 of the ESMA Q&A on the UCITS Directive and will update the CBI's UCITS Regulation (S.I. No. 230 of 2019) in due course. The application forms will be updated shortly in this regard. As such, the CBI requires existing multi-manager UCITS to have transitioned their current performance fee models into compliance with the ESMA Q&A by 1 January 2023 and will have updated their prospectuses accordingly by that time.

(ii) ID 1106

Q: I am a responsible person and wish to establish a new multi-manager UCITS and wish to implement a performance fee model. Must I comply with the performance fee requirements of Section XI, Question 5 of the ESMA Q&A on the UCITS Directive from the date of establishment?

A: Yes. From the date of this Q&A, the CBI will not authorise new multi-manager UCITS that have a performance fee structure which does not comply with the aforementioned ESMA Q&A.

The Q&A is available here.

AIFM and UCITS Directives: the latest developments

European Commission issues proposals to update the AIFM and UCITS Directives

Background

The European Commission (the "Commission") has issued a proposal for an amending Directive to the AIFM Directive (2011/61/EU) (the "AIFMD") and the UCITS Directive (2009/65/EC). The proposals are the outcome from the AIFMD consultation which the Commission conducted from October, 2020 to January, 2021.

The Commission's review concluded that the AIFMD standards for ensuring high levels of investor protection are mostly effective and that the AIFMD is generally meeting its objectives.

However, changes are proposed to both AIFMD and the UCITS Directive on delegation, liquidity risk management, data reporting for market monitoring purposes and the regulatory treatment of CSDs, whereas the AIFMD alone will be amended to create a European framework for loan-originating funds and access to cross border depositary services.

The European Parliament and the European Council will negotiate a final legislative text based on these proposals commencing in early 2022. Once finalised, member states will have 24 months after the entry into force of the amending Directive to adopt and publish the laws, regulations and administrative provisions necessary to comply with that Directive.

What's in the Commission's proposed amendments?

There are proposed amendments to both the AIFMD and the UCITS Directive in a number of different areas as detailed in the two sections below.

AIFMD (only)

(i) Ancillary Services:

- AIFMD amended to extend the list of ancillary services that AIFMs could provide, to include the administration of benchmarks and credit servicing.

(ii) Depositary Passport:

- The Commission has dropped the idea of a depository passport.
- Competent authorities will allow depositary services to be procured in other member states copying in effect the national placement regime.
- There will also be a requirement for depositaries to not only cooperate with their competent authorities but also with the competent authorities of the AIF that has appointed it as a depositary, and with the competent authorities of the AIFM that manages the AIF.

(iii) High Risk Countries for AML and Non-Cooperative in Tax:

- Non-EU AIFs, non-EU AIFMs and third country depositaries cannot be established in jurisdictions identified as high risk according to the latest European laws against money laundering or in a third country that is deemed un-cooperative in tax matters.

(iv) Loan Origination:

- Lending is to be recognised as a legitimate activity of AIFMs as well as the servicing of securitisation special purpose entities ('SSPEs').
- AIFMs managing AIFs, which grant loans, must implement effective policies, procedures and processes for the granting of loans, risk management and periodic reviews.
- Loans originated to any single borrower by the AIF it manages does not exceed 20% of the AIF's capital where the borrower is a financial undertaking or a collective investment undertaking.
- The 20% limit ceases to apply once the AIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the AIF.
- To avoid conflicts of interest, an AIF cannot lend to its AIFM or its staff, its depositary or its delegate.
- In line with the rules on securitisations, AIFs are required to retain an economic interest of 5% of the notional value of the loans they have originated and plan to put onto secondary markets.
- AIFs must be closed-ended where more than 60% of NAV exceeds originated loans.
- AIFMs will also need to report to investors the portfolio composition of originated loans.

AIFMD & UCITS

(i) Central Security Depositories ('CSDs'):

- CSDs to be included in the custody chain without imposing due diligence requirements on depositaries.

(ii) Delegation:

- AIFMs and UCITS management companies should have appropriate technical and human resources envisaged when applying for authorisation.

AIFM and UCITS Directives: the latest developments

European Commission issues proposals to update the AIFM and UCITS Directives

- When applying for the authorisation, the human and technical resources, which will be used to carry out its functions and to supervise the delegates, must be described in detail.
- The European Securities and Markets Authority ('ESMA') will receive notifications of delegation arrangements where risk or portfolio management is delegated to third country entities.
- ESMA is empowered to develop draft regulatory technical standards prescribing content, forms and procedures for the transmission of delegation notifications.
- ESMA is also required to present regular reports analysing market practices regarding delegation, compliance with the requirements applicable to delegation and supervisory convergence in this area to the Commission and co-legislators.
- The Directive clarifies that delegation arrangements apply to all functions and to the ancillary services permitted.
- ESMA is required to regularly conduct a peer review of supervisory practices in relation to letter-box entities.

(iii) Liquidity Management:

- In addition to being able to suspend redemptions, AIFMs/UCITS management companies have to choose at least one other Liquidity Management Tool ('LMT') from the Annexes to the Directive which sets out a harmonised list of available LMTs.
- The choice of the individual LMT is still left to the fund manager.
- AIFMs/UCITS management companies need to notify NCAs about their use of LMTs.
- The proposals also include the power for the competent authorities to require the activation or deactivation of a LMT.
- This power is extended to third country funds as well, though in this case the competent authority needs to first consult ESMA and the European Systematic Risk Board ('ESRB') based on a process to be determined by Regulatory Technical Standards ('RTS'). (AIFMD only)
- ESMA is to develop draft regulatory technical standards to provide definitions and specify the characteristics of the LMTs and on selecting and using suitable LMTs.
- Disclosure of the LMTs to be provided to investors in offering documents.

(iv) Substance & Location:

- The AIFM and UCITS management company has to employ at least two persons full-time or engage two persons, who are not employed but nevertheless are committed to conduct that business on a full-time basis and employees should be resident in the EU.

(v) Supervisory Reporting:

- The Commission will remove the "limitations" to data reporting (for example, referring to "instruments traded", rather than "the main instruments traded"), which could pave the way for full portfolio reporting.
- ESMA empowered to amend the Annex IV reporting template, including the frequency of reporting.
- ESMA is also asked to take into account other reporting frameworks and to reduce duplications.
- Supervisory reporting requirements also to be introduced for UCITS management companies.

Next steps

The publication of the Commission's proposals is not the end of the process but is a critical stage. The French Presidency of the Commission which runs from January to June 2022 has already commenced the process of negotiation between the European Parliament and the Council (EU Member State Government representatives) to secure agreement on the proposed amendments to both the AIFM Directive and the UCITS Directive. Further changes to the Commission's proposals cannot therefore be ruled out and industry representative bodies and firms will need to remain engaged in the process until the finalised amendments are approved and published in the Official Journal of the European Union. The negotiation process is expected to continue for most of 2022 with publication in the Official Journal of the European Union anticipated sometime in 2023 with implementation by the 27 EU Member States by 2025.

For further information please contact Ken Owens

AML: the latest developments

Central Bank of Ireland review of AML/CFT of Funds and Fund Management Companies

Overview

The Central Bank of Ireland ('CBI') has recently published an AML Bulletin which addressed the findings from the Central Bank's Anti-Money Laundering/Counter Financing of Terrorism/Financial Sanctions (AML/CFT/FS) supervisory engagements with Funds and Fund Management Companies (Firms).

Background

In the course of its supervisory engagements, the CBI has identified a number of areas where Firms must introduce enhancements in order to ensure they can sufficiently demonstrate compliance with the requirements of the CJA 2010.

These areas are:

- Corporate Governance
- AML/CFT/FS Business Risk Assessment
- Outsourced AML/CFT/FS Activities
- Customer Due Diligence

The CBI expects Firms to be in a position to demonstrate that appropriate governance structures are in place to manage and oversee existing and emerging ML/TF/FS risks, including addressing the deficiencies highlighted by the CBI.

A robust risk management framework that appropriately and effectively identifies and mitigates the inherent ML/TF/FS risks at both a sectoral and individual firm level is key in supporting Firms to address the weaknesses identified by the CBI.

The CBI expects Firms to have implemented effective governance, risk and control functions and to be able to demonstrate to the CBI:

- Sufficient oversight of the AML/CFT/FS framework to ensure compliance with the requirements of CJA 2010;
- The identification and management of ML/TF/FS risks to which they are exposed is an iterative and ongoing cornerstone of the Firm's AML/CFT/FS framework; and
- Continual review and assessment of existing processes and procedures to enhance the AML/CFT/FS framework on an ongoing basis, so that firms are well-positioned to respond to emerging risks, legislative changes and regulatory guidance.

The CBI says that it will continue to conduct supervisory engagements with Firms in this sector and expects Firms to be in a position to demonstrate that they have reviewed the findings and expectations detailed in this bulletin and, where gaps/weaknesses are identified by firms, sufficient steps have been taken to remediate the identified gaps/weaknesses.

In instances where firms fail to demonstrate the necessary remediation to ensure compliance, the CBI has advised that it will determine the appropriate action to undertake, within its full range of its regulatory tools, including where necessary utilising its enforcement powers.

AML: the latest developments

Central Bank of Ireland review of AML/CFT of Funds and Fund Management Companies

CBI review findings

(i) Corporate Governance

CBI findings

Through its supervisory engagements, the CBI has identified a lack of oversight by Firms of their AML/CFT/FS frameworks. A number of Firms failed to demonstrate effective oversight, implementation and management of the AML/CFT/FS framework.

CBI expectations

The CBI expects Firms to ensure that the AML/CFT/FS framework is appropriately governed and operating effectively.

(ii) AML/CFT/FS Business Risk Assessment

CBI findings

The CBI has identified failings by Firms in the design and implementation of their AML/CFT/FS Business Risk Assessment. The National Risk Assessment specifically highlights complexities of the business activities and outsourcing of AML/CFT/FS activities as presenting increased ML/TF risk for this sector.

Additionally, distributor and sub-distributor relationships are a common feature of this sector, which further increases ML/TF risk exposure. In completing their Business Risk Assessments, Firms did not sufficiently demonstrate that they had undertaken a comprehensive review to include, but not limited to, the above inherent ML/TF risks.

CBI expectations

A robust Business Risk Assessment is a fundamental and essential component of the development of an AML/CFT/FS framework that ensures Firms can appropriately and effectively design and implement the necessary controls to mitigate and address the ML/TF/FS risks to which their business is exposed.

It is therefore essential that Firms can ensure, and consequently demonstrate, that the Business Risk Assessment has been tailored to the risks for both their sector and to the ML/TF/FS risks that are specific to their business.

The CBI expects Firms to demonstrate that an AML/CFT/FS risk framework has been embedded that is commensurate with the risk of ML/TF/FS for their business. In completing the Business Risk Assessment, the CBI expects Firms to refer to the National Risk Assessment, the Guidelines and the European Supervisory Authority Risk Factor Guidelines for areas to consider when assessing ML/TF/FS risk.

(iii) Outsourced AML/CFT/FS Activities

CBI findings

Firms commonly outsource AML/CFT/FS activities to third parties, thus elevating the risk of ML/TF. While activities can be outsourced, Firms retain ultimate responsibility for ensuring full compliance with the CJA 2010 and with the Firm's obligations in respect of Financial Sanctions.

The CBI continues to identify weaknesses in Firms' oversight of AML/CFT/FS activities delegated to, and undertaken by, third parties on their behalf. Firms must demonstrate robust oversight of all AML/CFT/FS activities outsourced to third parties in order to ensure full compliance with the requirements of the CJA 2010.

CBI expectations

An effective governance framework extends to the oversight of AML/CFT/FS activities outsourced to third parties. The CBI expects Firms to have robust processes and procedures in place to oversee the AML/CFT/FS activities that have been outsourced to third parties, including intra-group entities.

(iv) Customer Due Diligence

CBI findings

In engaging with this sector the CBI has identified instances of a lack of compliance by Firms in respect of the application of some requirements under Section 33 of the CJA 2010, which relates to Customer Due Diligence (CDD).

A particular concern in this area was non-compliance with Section 33 (6) of the CJA 2010, which requires that all CDD is in place prior to processing transactions, including initial subscriptions.

CBI expectations

The CBI expects Firms to have comprehensive policies and procedures in place for the identification and verification (where applicable) of customers in line with the requirements of Section 33 of the CJA 2010.

It is vital that, in identifying their customers, Firms can demonstrate to the CBI that they are applying measures that are commensurate with the risk of ML/TF. In this sector CDD is largely outsourced to OSPs. Firms have ultimate responsibility for compliance with the requirements of the CJA 2010 and must be in a position to demonstrate effective oversight of the CDD processes and procedures.

AML: the latest developments

Central Bank of Ireland review of AML/CFT of Funds and Fund Management Companies

Where to from here?

This latest AML bulletin from the CBI should be read in conjunction with previous bulletins, reports and guidance issued by the Central Bank. It also follows quick on from the release in June 2021 of updated Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector.

At an EU level, significant changes have been announced to the anti-money laundering and countering the financing of terrorism (AML/CFT) rules. In July 2021, the European Commission presented an ambitious package of legislative proposals to strengthen the EU's anti-money laundering and countering the financing of terrorism (AML/CFT) rules. The package also includes a proposal for the creation of a new EU authority to fight money laundering.

With the AML package, the European Commission wants to reach the following three broad objectives:

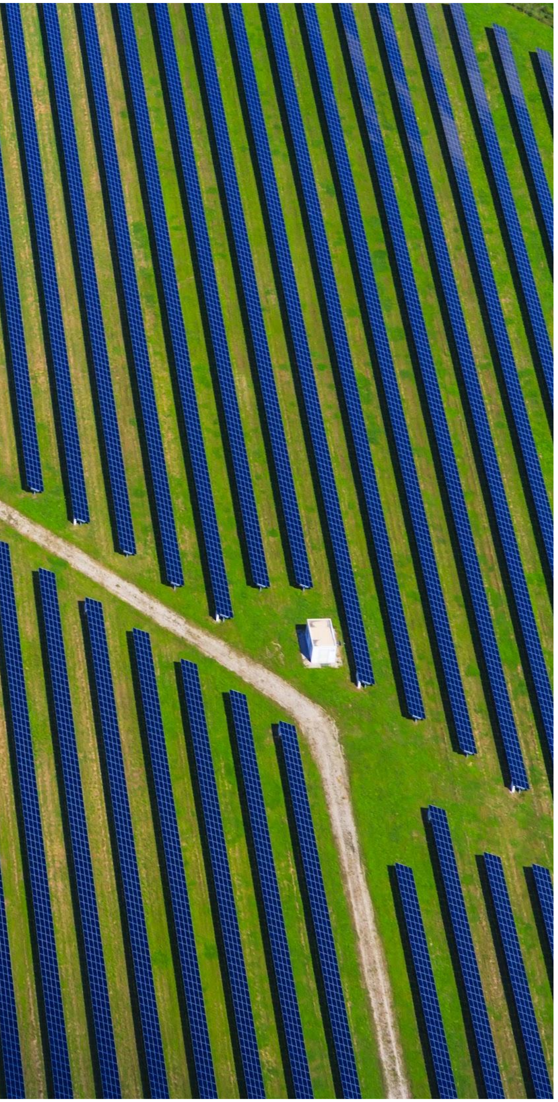
1. Address the fragmentation in transposition at national level through greater harmonisation in the application of certain rules by gatekeepers. The Commission proposal will therefore contain a proposal for a AML regulation, directly applicable in Member States;
2. Enhanced supervision at EU level, while not replacing national supervision. Such enhanced supervision, e.g. by a dedicated EU supervisory authority, aims to increase supervision of the non-financial sector, in addition to the supervision of financial institutions;
3. Better coordination of Financial Intelligence Units ('FIUs'). Cooperation between national FIUs will be supported at EU level, e.g. in helping them carry out joint analysis, through the development of standards for reporting suspicious transactions, or by providing information technology (IT) assistance and support for exchanging financial information.

Meanwhile, the CBI will continue to conduct supervisory engagements with Firms and expects Firms to be in a position to demonstrate that they have reviewed the findings and expectations detailed in this latest bulletin and, where gaps/weaknesses are identified by firms, sufficient steps have been taken to remediate the identified gaps/weaknesses.

For further information please contact Ken Owens and Catherine Chambers

Suitability: the latest developments

MiFID II Suitability rules to undergo substantial changes



With the ever increasing focus on and the flow of new regulatory pronouncements in relation to ESG one might be forgiven for thinking that ESG is all that regulators have been looking at recently. However, that's not the case.

On 1 December, the Central Bank of Ireland (CBI) published a Dear CEO letter outlining the findings of a regulatory review of investment firms' compliance with the suitability requirements under MiFID II. The purpose of the review, which was part of an European Securities and Markets Authority (ESMA) coordinated Common Supervisory Action, was to assess firms' compliance with the **Suitability** requirements under MiFID II[1] by simultaneously conducting supervisory reviews throughout the European Union (EU). The EU wide findings were highlighted in ESMA's public statement published in July which incorporated the findings from the CBI's review.

Fundamentally, when providing investment advice and/or portfolio management, investment firms are required to take all reasonable steps to ensure that a client's investments align to their objectives and personal circumstances. This is a key measure to protect investors from the risk of purchasing unsuitable products.

The "Suitability" obligations do not just apply to MiFID investment firms

It's also important for the boards directors of UCITS management companies and Alternative Investment Fund Managers (AIFMs) to be mindful of the fact that the MiFID suitability requirements apply to UCITS management companies and external AIFMs when providing the investment services of individual portfolio management or investment advice. Since Brexit an increasing number of UCITS management companies and external AIFMs have been licensed to provide these services. While these firms were not in scope for the CBI review these firms will also need to ensure that they consider both the findings in ESMA's letter and the findings in the CBI's recent letter and ensure that they are applied as appropriate in their businesses.

So what did the CBI's review find?

The CBI review identified evidence of positive practices, particularly where firms took a personalised and comprehensive approach to suitability assessments for their clients. However, the CBI also identified instances where further action is required by firms. For example:

- Firms need to take a more client focused approach, using tailored suitability assessments specific to their businesses and the needs and circumstances of their clients.
- Firms must improve their assessment of clients' knowledge and experience, financial situation and investment objectives, particularly information relating to clients' financial situation and their capacity to withstand losses.
- Firms must ensure suitability reports are sufficiently detailed and personalised to clients' objectives and individual circumstances.
- The CBI raised a particular concern at the quality of firms' oversight of cases where a client insists on proceeding with the transaction at their own initiative against the firm's suitability advice. In such a case, clients should be clearly informed that the transaction is not considered by the firm to be suitable, including a clear explanation of the potential risks involved if the client proceeds.

The CBI also said that it will continue to engage with firms where specific supervisory actions have been imposed, which require firms to take specific action on foot of our findings.

[1] Article 25(2) of MiFID II and Articles 54 and 55 of the MiFID II Delegated Regulation, require investment firms providing investment advice or portfolio management to provide suitable personal recommendations to their clients or have to make suitable investment decisions on behalf of their clients.

Suitability: the latest developments

MiFID II Suitability rules to undergo substantial changes

So what impact does ESG have on the "Suitability" obligations of investment firms?

On 2 August 2021, the European Commission (the Commission) published a Delegated Regulation which amends MiFID II by introducing provisions requiring the integration of sustainability factors, sustainability risks and clients sustainability preferences as a top up to the suitability assessments performed by investment firms. These new measures which apply from 2 August 2022 will have a significant impact on how investment firms' market to and onboard clients, as sustainability will need to be fully integrated into these activities.

Existing suitability assessments have not generally included questions on clients' sustainability preferences, while the majority of clients would not have raised such preferences themselves, at least until now. Both the retail and institutional segments are showing fast increasing interest in sustainable investment and are increasingly allocating capital in a sustainability conscious manner.

As a result of the changes to MiFID II which have been adopted, investment firms will need to understand the client's sustainability preferences, give more appropriate consideration to the sustainability factors (environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters) of investment services and financial instruments selected for their clients and update the suitability reporting provided to clients to include details that explains how the recommendation provided is suitable for the retail client, including how the recommendation meets the client's sustainability preferences.

One of the fundamental challenges which arises from the above is that "sustainability" may mean different things to different clients and firms will need to determine the level of sustainability knowledge which different clients have as part of the process to determine what their preferences are.

What action do firms need to take?

- Update and enhance client onboarding processes to collect and document client sustainability preferences;
- Assess and document the sustainability factors relevant to the investment services offered to clients;
- Update and enhance the processes and procedures to identify the sustainability factors to be taken into consideration in the selection process of financial instruments to be recommended to clients;
- Enhance the suitability assessment processes and procedures to include the appropriate consideration of whether and how the product or service proposed meets the client's sustainability preferences, if any;
- Update their conflict of interest policies and procedures to ensure that any conflicts which may be detrimental to a client's interests which arise from his or her sustainability preferences are identified and are appropriately taken into account in the course of providing the investment services;
- Update and enhance the firm's processes, procedures and client disclosures so as not to recommend financial instruments when those instruments do not meet the client's sustainability preferences and to explain to the client or potential clients the reasons for not doing so;
- Update the information provided to clients, where relevant, to provide a description of the sustainability factors taken into consideration in the selection of financial instruments;
- Enhance the firm's recording keeping procedures to keep a record of circumstances where no financial instrument meets the sustainability preferences of the client or the client decides to adapt their sustainability preferences; and
- Enhance the periodic suitability reporting provided to retail clients to include how the recommendations made are in line with the client's sustainability preferences.

The MiFID II changes also create new obligations to integrate sustainability factors, risks and preferences into organisational requirements and operating conditions for investment firms. Organisational requirement frameworks will need to be amended to integrate sustainability risk into policies and procedures, training, product governance and risk management plans as Boards of Directors will need to ensure their firms are equipped to meet these requirements.

For further information please contact Ken Owens and Lesley Bell

Overseeing cyber risk: the Board's role

The recent cyber attack suffered by the Irish health service is another reminder that cyber risk is an enterprise-wide issue, and companies need to build resiliency to address the threat of a breach. Cyber risk management is no longer just about preventing breaches.

A good programme can also help companies get back on their feet and mitigate financial and reputational damage when a breach occurs.

How do you know whether your company is doing all it should?

In its latest publication on this topic, PwC's Governance Insights Center outlines four key areas where boards should take action to support their company in establishing an effective cybersecurity risk management program.

1. **Ensure cyber risk is embedded in strategic decisions - and the company's culture**

   Many strategic decisions have a cyber risk component. For example, adopting new technologies to better enable and connect a remote workforce changes the company's cyber risk profile. Cyber has to be a consideration when changing operations, entering new markets, developing new products and services, and when making acquisitions. It also should be considered when vetting what third parties the company partners with to both produce and distribute products and services.

   While the heavy lifting is done by the IT team, cybersecurity needs to be built into the culture of the organization. It is everyone's responsibility. To tackle cyber risk, the board of directors, CEO, management, business unit leaders, and the IT and security groups all need to address the cybersecurity implications of their business decisions and activities. The company's efforts to address cyber risk need to be coordinated and collaborated throughout the organization. There's also another important group: the company's employees. They support IT security when they follow company policies, standards, and procedures, get training, and report suspicious activity. Messaging from senior leaders in the company should underscore the importance of being a cyber-aware organization and the critical role that employees play.

2. **Understand the cyber risk management program**

   Boards want to know whether management is focusing on the right cyber risks, how management is addressing those risks, and whether it's enough. This starts with understanding the company's cyber risk management program and cyber risk appetite.

   ### Understand the company's risk posture

   To do this, directors need to know the company's key cyber risks. Who are the main threat actors? What are their motives? What are they targeting and what is the potential business impact? Knowing this information can help zero in on the potential vulnerabilities at the company and clarify the right steps for management to take to address them. These key cyber risks can then be integrated into the company's enterprise risk management program. Ultimately, the level of cyber risk has to fit within a company's risk appetite.

   ### Review the reporting

   Cyber reporting to the board should be in jargon-free language so the board can easily get a snapshot of what's going on. Many boards today are getting a cyber scorecard. A cyber dashboard or scorecard prepared by the CIO or CISO can help the board assess current risks and track progress. With clearly identified and quantified cyber-related metrics, as well as a consistent format, the board can spot any trends that show the company improving or falling short relative to key risks.

   Boards should also understand how the company's cyber program stacks up against a standardized framework such as the National Institute for Standards and Technology (NIST) Cybersecurity Framework. Directors will want to understand how management is leveraging a framework as a risk management tool. For example, directors should ask where there are gaps and how those gaps are being closed as part of improving the maturity of the program.

   Boards should also be getting information about the multi-year strategic plan, current year business plan, resources, cyber training program, and other information about the company's cyber activities to get a holistic view. One way to do this is to have management create a calendar that takes the board meeting dates and outlines the various cyber board reporting areas to help facilitate agendas and ensure all key areas are covered.

Overseeing cyber risk: the Board's role

3. Monitor cyber resilience

With the rise in ransomware attacks and increase in breaches, many boards focus significant attention on resilience plans. The ultimate objective is to be able to detect and respond to cyber threats quickly to minimize business disruption and financial losses. The key to recovery is protecting the company's critical systems. This means limiting potential damage to systems from a cyber event and ensuring systems can recover from a cyber event.

Even with a robust risk management program, there still can be a successful breach, and companies need a playbook for how to recover quickly.

4. Rethink the board's cyber oversight allocation

By now, most boards have allocated cyber risk oversight somewhere - either to a committee (typically the Audit Committee) or the full board. But it may be time to rethink that allocation. Given all the audit committee has on its agenda these days, some boards are considering whether a move to a separate cyber/technology or risk committee makes sense. And some boards have deemed cyber a risk that the full board needs to oversee, taking it out of committee. No matter what, if oversight rests with a board committee, it's important that the full board gets regular and comprehensive updates. Directors also need to maintain an adequate level of cyber knowledge to understand the nature of current risks and provide strategic direction in protecting the organization against them. It is helpful to reassess the board's oversight approach periodically to ensure it is working effectively.

Cybersecurity can be an intimidating area for the board to oversee. However, a well-thought-out approach to oversight, robust reporting, and a strong relationship with the CIO/CISO can pave the way for greater understanding and collaboration between the board and management on this critical topic.

Cyber resilience is also a key area of focus in the recently published Central Bank of Ireland Cross Industry Guidance on Operational Resilience where Guideline 9 emphasises the significance of having a resilient ICT & Cyber Framework and the importance of identifying where ICT is part of the chain of activities in delivering a critical or important business service.

For further information please contact Ken Owens

Upcoming deadlines

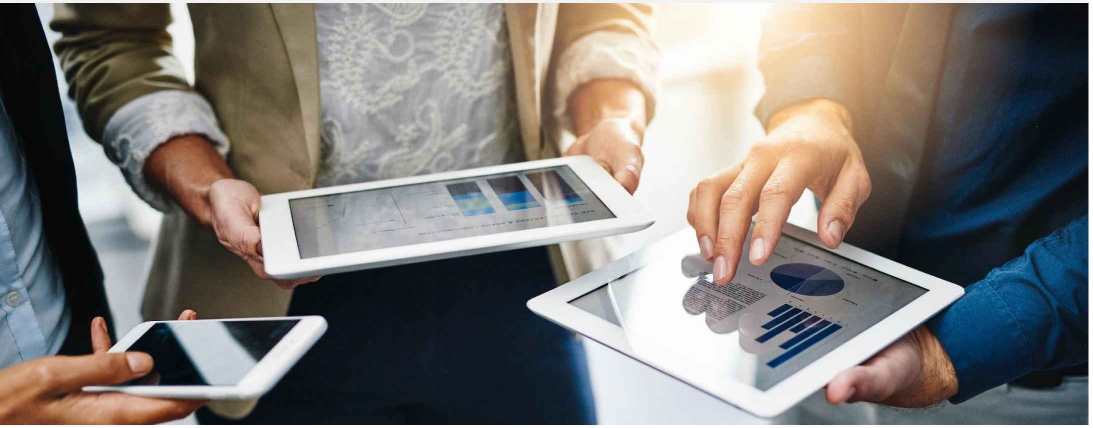
January / February 2022	• **Fitness & Probity: 31 January 2022/ 28 February 2022 -** Regulated Financial Service Providers ('RFSPs') must submit their annual Pre-Approval Controlled Function ('PCF') Confirmation Return to the CBI. The submission due date for the annual PCF Confirmation Return (for the year ending 31 December 2021) for UCITS Management Companies and for AIFMs is 31 January 2022. The submission due date for investment funds will likely be 28 February 2022. The current annual PCF Confirmation Return and associated reporting date and submission deadline for each entity will be detailed on the CBI Online Reporting ('ONR') system.
February 2022	• **Cross Border Distribution Framework ('CBDF'): 2 February 2022 -** AIF and UCITS marketing communications must comply with ESMA's Guidelines on marketing communications under CBDF by this date. • **UCITS Key Investor Information Document ('KIID'): 21 February 2022 -** UCITS are required to update their KIID annually for each sub-fund / standalone fund within 35 business days of the end of each calendar year. The annual update of the KIID must be filed no later than 21 February 2022. Any update to the KIID filed with the CBI must be translated and filed in any other host jurisdictions where the UCITS is registered to market its shares and must then be uploaded on the UCITS website. AIFs which have issued a Packaged Retail Investment and Insurance-Based Product ('PRIIPs') Key Investor Document ("KID") must review KIDs regularly, when there is a significant change, and at least annually. Unlike the UCITS KIID, there is no annual refresh deadline. UCITS are currently exempt from the obligation to produce a PRIIPs KID until 1 July 2022.
February 2022 (continued)	• **Fund Profile Return: 28 February 2022 -** The annual Central Bank Fund Profile Return is required for all Irish authorised sub-funds. It is to be prepared for the period up to 31 December 2021, with a submission deadline (via the CBI's Online Reporting System ('ONR') of 28 February 2022. The CBI does not anticipate that the fund profile will change from year to year, as changes would most probably reflect changes within the fund's offering documents. Therefore, year-to-year updates to the fund profile are expected to be minimal and reflect significant changes. The CBI issued guidance and a template.
March 2022	• **MiFID: 31 March 2022 -** CBI deadline for completion of compliance review by MiFID firms with client suitability rules.

PwC Asset & Wealth Management credentials

As a firm we are proud of the depth and breadth of insights and access to networks we can bring to our clients. In Ireland and internationally, we have an unrivalled client base that allows us to identify and share developing trends and issues.

A dedicated Asset & Wealth Management team with unrivalled experience. It is our people, our experience and our passion to contribute to your success that makes us the right team for you. Our Asset & Wealth Management group is the largest in Ireland with nearly 400 investment professionals and staff.

Building on our track record of delivering alternative thinking. We use our knowledge to both shape and drive regulation and help our clients, not just in implementing new standards and requirements, but to prepare for future requirements and to ensure that products are properly designed.



Financial statements audit

Trust is an important factor in gaining and sustaining the confidence of your stakeholders.

Using our experience and proven track record we can provide the smooth and efficient audit needed to give comfort to you and your stakeholders.

Tax advice

We have a dedicated group of tax professionals, focused on international and local tax issues facing fund managers. We have a wealth of resources and expertise to assist you in addressing the various tax challenges such as:

- Corporate tax advice
- Financial transactions taxes
- Transfer pricing
- International tax consulting services
- Global tax compliance services
- VAT services

Regulatory advisory services

Regulatory change has imposed significant additional requirements and costs on all fund managers. Our suite of services includes:

- Advice on regulatory obligations
- Assurance on regulatory reporting systems and controls
- Assistance with Central Bank of Ireland regulatory authorisations
- Regulatory remediation support

Operations effectiveness

Asset management companies face people, process and cost challenges similar to many other financial services companies. Our suite of services to help firms to overcome these challenges includes:

- Process intelligence
- Drafting or updating process maps and procedures manuals
- Pre/Post acquisition/disposal services
- Client Assets/Investor Money advice
- Outsourcing/off shoring advice and reviews

PwC Asset & Wealth Management credentials

Digital, data, technology and cyber services

Asset management entities are faced with digital, technological, information security and data issues similar to many other financial services companies, while they also seek to simplify business models and improve efficiency. PwC can assist by improving existing technology and helping with new solutions, while keeping your systems secure. Our suite of services includes:

- Digital strategy and system selection support
- System implementation
- Cyber security services
- Project management of IT/Digital projects

Governance

Boards of Directors often need support to adapt to the fast pace of change within the industry. In addition, they will often seek an additional layer of comfort over the companies they are over-seeing. Our suite of services includes:

- Corporate governance reviews
- Assistance with Compliance or Risk Management Frameworks
- Reviewing approaches to Organisation Effectiveness
- Tailored director training

Internal audit services

Directors and senior management of fund management companies need to understand the organisation’s objectives, risk management priorities, regulatory environment and critical stakeholders’ needs to maximise the value and effectiveness of the internal audit function. We can help by:

- Developing and assessing whether your internal audit and risk management methodologies are delivering as effectively as possible to stakeholders.
- Solving your resourcing problems including full outsourcing or complementing your team with specialist skills or geographical coverage.
- Developing training solutions unique to your business using our extensive market and industry knowledge.

Independent valuation services

We have the know-how, experience and network to select and use the right valuation approach and judgements.

We can help you assess, design and implement best in class valuation operating models and governance structures.

We can assist in the establishment of a Valuation Committee, advising as to its composition, mandate and accountabilities, specifying a reporting and monitoring plan.

Strategy and distribution advice

At its core Strategy is about helping clients to make choices - which market they want to play in, what products/services they need to win with and what capabilities they should leverage.

The strategy team undertake corporate plans, feasibility studies, commercial due diligence and market research.

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