MAPLES GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | April – June 2019

Table of Contents

1 Legal & Regulatory

1.1 UCITS Update

There have been a number of developments over the quarter:

Revised UCITS Regulations and Central Bank Q&A

Following the Central Bank of Ireland (the "Central Bank") consultation CP119, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 ("2019 Regulations") came into force on 27 May 2019. They set out requirements for UCITS, UCITS management companies and depositaries of UCITS and consolidate the previous regulations and contain amendments:

(a) Arising from a review of the previous UCITS Regulations;

(b) To UCITS share class provisions to reflect the European Securities and Markets Authority's ("ESMA's") 2017 opinion on UCITS Share Classes. They also set out a new requirement in Schedules 7 and 8, according to which annual and half-yearly reports must include an up-to-date list of all share classes of the UCITS in issue during the reporting period and identify whether the relevant share class is hedged;

(c) On UCITS performance fees including a new performance fee crystallisation frequency requirement - performance fees may now only crystallise and be paid once a year (this is subject to an 18 month transitional period for funds in existence at 27 May 2019). The Central Bank's guidance on UCITS performance fees has also been codified to give it a firmer statutory footing on which to take action against firms for breaches of performance fees requirements. They also contain prospectus disclosure obligations in relation to performance fees; and

(d) Arising from the implementation of the EU Money Market Fund Regulation EU / 2017 / 1131 ("MMFR") including the disapplication of certain provisions to Irish domiciled money market funds in order to remove any overlap with MMFR.

UCITS, UCITS management companies and depositaries need to ensure that they comply with the new requirements immediately. In addition, the Central Bank published a feedback statement on its consultation process ("CP119") as well as a revised edition of its UCITS Q&A (see further details below).

On 6 June 2019, the Central Bank published an updated UCITS Q&A which includes four new Q&As in relation to the 2019 Regulations:

(a) ID 1090 confirms it is acceptable to charge performance fees permitted by the 2019 Regulations at (i) an individual investor level or (ii) at a share class / fund level, as adjusted for subscriptions and redemptions;

(b) ID 1091 confirms that the crystallisation and payment of a performance fee by a UCITS on the redemption of shares / units by an investor is not considered to be an annual calculation for the purposes of the 2019 UCITS Regulations;

(c) ID 1092 states that exposure to credit institutions arising from cash held as ancillary liquidity are included in the individual and group limits for deposits provided for by the 2019

Regulations and the limits apply irrespective of whether the accounts are held for investment or ancillary liquidity purposes; and

(d) ID 1093 confirms that Regulation 47 which requires that each UCITS authorised by the Central Bank establishes and maintains an email address for Central Bank correspondence applies at umbrella level.

Existing Q&As have also been amended to update the references to 2019 Regulations.

For more information see our client update: Central Bank of Ireland Revamps the Regulatory Framework for Irish UCITS

ESMA and CSSF Q&As

On 4 June 2019, ESMA updated its Q&As on the application of the UCITS Directive 2009 / 65 / EC. It updates Section VI of the Q&As (Depositaries) to include new Q&As on the following:

(a) The distinction between depositary tasks and mere supporting tasks;

(b) Depositary tasks entrusted to third parties;

(c) The performance of depositary functions where there are branches in other member states;

(d) The supervision of depositary functions where there are branches in other member states; and

(e) Delegation by a depositary to another legal entity in the same group.

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Existing Q&As have also been amended to update the references to 2019 Regulations.

Luxembourg

On 11 April 2019, the Commission de Surveillance du Secteur Financier ("CSSF") published an updated FAQ on undertakings for collective investment to reflect one amended Q&A in relation to the EU PRIIPs KID Regulation 1286 / 2014. Question 6.1 confirms that Luxembourg UCITS must have a PRIIPs KID in place as of 1 January 2020 or later if the exemption period in the PRIIPs KID Regulation is extended to a later date. Luxembourg UCITS will be exempt from the obligation to prepare a PRIIPs KID until such date.

1.2 AIFMD Update

There have been a number of recent developments in relation to the Alternative Investment Fund Managers Directive 2011 / 61 / EU ("AIFMD"):

ESMA Q&As

On 4 June 2019, ESMA updated its Q&As on the application of AIFMD. It updates Section VI of the Q&As (Depositaries) to include new Q&As on the following:

(a) The distinction between depositary tasks and mere supporting tasks;

(b) Depositary tasks entrusted to third parties;

(c) The performance of depositary functions where there are branches in other member states;

(d) The supervision of depositary functions where there are branches in other member states; and

(e) Delegation by a depositary to another legal entity in the same group.

CSSF Q&As

On 11 April 2019, the CSSF published an updated FAQ on alternative investment fund managers ("AIFMs") to reflect four amended Q&As in relation to the PRIIPs KID Regulation:

(a) Question 23.b confirms that certain Luxembourg AIFs may issue a UCITS-like KIID in order to avail of the exemption from the obligation to prepare a PRIIPs KID until 31 December 2019 or later if the exemption period provided for in the PRIIPs KID Regulation is extended to a later date, provided certain conditions are satisfied; and

(b) Questions 23.l, 23.n and 23.q clarify that prior notification to the CSSF of final PRIIPs KIDs / UCITS-like KIIDs is not required, however, the CSSF reserves the right to request such notification on a case by case basis. This reflects a change in the CSSF's regulatory practice.

1.3 Brexit Update

On 12 April 2019, ESMA confirmed that its statements and measures on no-deal Brexit scenario preparations referring to 12 April 2019 should now be read as referring to 31 October 2019.

On 24 May 2019, the UK Financial Conduct Authority (the "FCA") announced its intention to extend the window for notifications under its temporary permissions regime ("TPR") until the

end of 30 October 2019. Firms must notify the FCA if they wish to enter the regime. The TPR enables relevant firms and funds which passport into the UK to continue operating in the UK if the passporting regime falls away abruptly when the UK leaves the EU.

Ireland

On 10 June 2019, the Central Bank updated its Brexit FAQ for Financial Services Firms.

Luxembourg

On 11 April 2019, the laws of 8 April 2019 regarding measures to be taken in relation to the financial sector in the event of a withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (the "Brexit Laws") were published in the Official Journal of Luxembourg.

The Brexit Laws comprise two separate legislative texts and make various amendments to existing investment fund and financial sector legislation. Some of these amendments will allow FCA regulated UK entities currently providing services to Luxembourg financial sector participants to continue to do so during a fixed transitional period.

The first Brexit Law will only take effect in the event of a hard Brexit. In contrast, the second Brexit Law will take effect not only in the event of a hard Brexit but in any Brexit scenario. The CSSF indicated on 12 April 2019 that, due to the ongoing political uncertainties surrounding Brexit, it will communicate with industry at a later date on the actions to be taken by UK entities in order to benefit from the transitional periods in the Brexit Laws.

For more information see our client updates:

Luxembourg Update Publication of Draft no Deal Brexit Legislation

Luxembourg Update: Brexit Bills Passed in Luxembourg Parliament and

Luxembourg Update: Brexit Laws Published.

1.4 Investment Limited Partnerships – Proposed Changes

On 20 June 2019, the Investment Limited Partnership (Amendment) Bill 2019 was published. The investment limited partnership ("ILP") is a regulated common law partnership structure which will be of significant interest to international managers marketing to EU investors and wider global markets. The Bill seeks to introduce a number of changes to position the Irish ILP as a leading EU fund vehicle for private equity and sustainable investments.

The enhancements to existing legislation will update it in line with features (i) introduced in other leading Irish structures (e.g. the ICAV); and (ii) offered in other leading common law partnership structures (e.g. Delaware LLPs, Cayman Islands ELPs and UK LPs). The aim is to make the ILP a preferred vehicle for EU investment funds structured as partnerships, particularly as it will be able to avail of the AIFMD marketing passport.

See also The Investment Limited Partnership

1.5 Redomiciling Funds in Ireland - Relevant Jurisdictions Regulations

In May 2019, the Irish Minister for Finance made the Irish Collective Asset-Management Vehicles Act 2015 (Section 145(2)) (Relevant Jurisdictions) (Amendment) Regulations 2019 and the Irish Collective Asset-Management Vehicles Act 2015 (Section 149(2)) (Relevant Jurisdictions) (Amendment) Regulations 2019. These add Bermuda and Guernsey to the list of "relevant jurisdictions" from which a foreign registered investment company can migrate inwards to Ireland and continue as an ICAV and also provide for reciprocal arrangements enabling Irish investment funds constituted as ICAVs to move to Bermuda and Guernsey.

As a consequence of these regulations, the list of "relevant jurisdictions" from and to which ICAV migration is now permitted includes:

(a) British Virgin Islands;

(b) Cayman Islands;

(c) Jersey;

(d) Bermuda; and

(e) Guernsey.

The Minister for Finance also signed the Companies Act 2014 (Section 1412(2)) (Relevant Jurisdictions) Regulations 2019 and the Companies Act 2014 (Section 1408(2)) (Relevant Jurisdictions) Regulations 2019 that designate the jurisdictions listed above as relevant jurisdictions under corresponding provisions of the Companies Acts 2014.

For more information see our client update: New jurisdictions for fund redomiciliations added to the ICAV Act 2015 and Companies Act 2014

1.6 Fitness and Probity Regime Obligations - Ireland

On 8 April 2019, the Central Bank issued a "Dear CEO" letter to all regulated financial service providers regarding their obligations under its Fitness and Probity Regime. The letter applies to a number of firms, including collective investment schemes and their service providers. It reminds firms of their obligations under the Central Bank's Fitness and Probity Regime and highlights the main areas of compliance which the Central Bank has found to be deficient.

1.7 AML and Beneficial Ownership Register Update

Beneficial Ownership – Corporate Entities

Ireland

Part 3 of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 took effect on 22 June 2019 and the Companies Registration Office ("CRO") has established a central Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies ("RBO") available here. However, the opening of the RBO on 22 June was postponed temporarily. The CRO issued a notice confirming this on 24 June 2019.

A relevant entity (a corporate or other legal entity incorporated in the State) in existence before 22 June 2019 must deliver certain information to the Registrar by 22 November 2019: name, date of birth, nationality and residential address of each beneficial owner; details of the nature and extent of the beneficial interest held, or control exercised by, each beneficial owner; its name and company number; and PPS numbers of each Irish resident beneficial owner who has one.

Relevant entities that come into existence after 22 June 2019 must deliver this information to the Registrar within five months of incorporation.

The Garda Síochána, Ireland's Financial Intelligence Unit, the Revenue Commissioners, the Criminal Assets Bureau and other competent authorities will have unrestricted free access to the Central Register with the exception of beneficial owners' PPS numbers.

Access by members of the public and designated persons (with whom a relevant entity enters into an occasional transaction or a business relationship) is limited to the name, month and year of birth, country of residence, nationality, and statement of the nature and extent of the interest held / control exercised by each beneficial owner.

A relevant entity that fails to comply with its obligations commits an offence and is liable on summary conviction to a fine not exceeding €5,000; or on conviction on indictment, to a fine not exceeding €500,000.

For more information see our client update: Central Register of Beneficial Ownership of Corporates: Deadline for filing November 2019

Luxembourg

The law of 13 January 2019 establishing a register of beneficial owners (the "2019 Law") took effect on 1 March 2019 and the Luxembourg Business Registers has been assigned responsibility for the management of the beneficial owners register ("RBE") available here.

In-scope entities (any entity required by law to be registered with the Luxembourg register of trade and commerce) in existence before 1 March 2019 must electronically file information on their beneficiaries by 31 August 2019. Beneficial owners will need to provide their name, date of birth, nationality, country of residence and private or professional address, national or foreign identification number (as applicable) and details of the nature and extent of the beneficial interest held.

In-scope entities that come into existence after 1 March 2019 must file this information with the RBE within one month of incorporation / formation. The RBE will be available electronically and may be accessed by national authorities in the exercise of their functions, and members of the public. Members of the public will not, however, have access to the private residential or professional address or the national or foreign identification number of beneficial owners.

An in-scope entity and beneficial owner that fails to comply with its obligations may be subject to a fine which may range from €1,250 to €1.25 million.

For more information see our client update: Luxembourg Introduces Beneficial Ownership Register Regime

Other developments - Ireland

On 3 June 2019, Commission Delegated Regulation (EU) 2019 / 758 supplementing Fourth Money Laundering Directive EU / 2015 / 849 ("MLD4") with regulatory technical standards ("RTS") specifying the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries entered into force. It will apply from 3 September 2019.

Article 45 of MLD4 lists requirements for the implementation of group-wide policies and procedures for anti-money laundering ("AML") and countering the financing of terrorism ("CTF"). Where the law of a third country does not allow implementation of group-wide policies, Article 45(5) states that firms must ensure that their branches and majority owned subsidiaries in that third country apply "additional measures" to handle these risks, for example, when the sharing of customer-specific information within the group conflicts with local data protection requirements. The RTS set out the additional measures that firms should take to comply.

The General Scheme of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2019 which will implement the Fifth Money Laundering Directive EU / 2018 / 843 in Ireland was published in January 2019. EU Member States have to transpose it into national law by 10 January 2020. The final Bill has not yet been published.

Other developments – Luxembourg

The law to transpose MLD5 into Luxembourg law has yet to be published. However, the 2019 Law already foresees a right of public access to the register of beneficial owners which is required under MLD5.

On 23 May 2019, the CSSF issued a new online questionnaire in respect of AML and CFT (the "Questionnaire"). It seeks to collect standardised key information on money laundering and terrorist financing risks to which professionals under the CSSF's supervision are exposed. In addition, the Questionnaire will provide the CSSF with information on compliance with applicable AML and CFT laws and regulations and FATF recommendations as well as information on the procedures and measures that have been implemented to combat AML and CFT.

Completion of the Questionnaire is only required when establishing the following types of Luxembourg investment funds:

(a) Specialised investment funds governed by the law of 13 February 2007 relating to specialised investment funds ("SIF");

(b) Undertakings for collective investment governed by the provisions of Part II of the law of 17 December 2010 relating to undertakings for collective investments ("Part II UCI");

(c) Investment companies in risk capital governed by the law of 15 June 2004 relating to the investment company in risk capital ("SICAR"); and

(d) European long-term investment funds governed by the ELTIF Regulation (EU) 2015 / 760.

1.8 Cross Border Distribution of Investment Funds

On 14 June 2019, the European Council approved the draft regulation facilitating cross-border distribution of collective investment funds, amending the European Venture Capital Funds Regulation 345 / 2013 / EU ("EuVECA Regulation") and the European Social Entrepreneurship Funds Regulation 346 / 2013 / EU ("EuSEF Regulation") and covering aspects such as marketing communications and EU Member States' marketing requirements. It also approved the proposed directive amending the UCITS Directive and AIFMD relating to, among other things, pre-marketing and the discontinuation of marketing.

Both will enter into force 20 days after publication in the OJ which is expected shortly. However there will then be a 24 month transposition period, so the legislation will, most likely, not apply until sometime in Q3 2021 (the Regulation will be directly applicable 24 months later (with some exceptions) and Member States will have 24 months to transpose the Directive).

See also *Cross Border Fund Distribution Rules: Welcome Changes in the Pipeline*

1.9 ESMA / EBA Guidelines on Complaints-handling for the Securities and Banking sectors - Luxembourg

On 30 April 2019, the CSSF adopted the revised "Guidelines on complaints-handling for the securities (ESMA) and banking (EBA) sectors" by means of CSSF Circular 19 / 718 ("Circular 19 / 718"). These complement the "Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors" which the CSSF implemented by means of CSSF Regulation 16-07 relating to out-of-court complaint resolution.

As of 1 May 2019, CSSF Regulation 16-07 will apply to the following additional types of entities:

(a) Account information service providers providing only the payment service as referred to in point (8) of Annex I of the Payment Services Directive 2 2015 / 2366 / EU; and

(b) Credit intermediaries and non-credit institution creditors (as defined in Article 4(5) and (10) of the Mortgage Credit Directive 2014 / 17 / EU).

Circular 19 / 718 will, however, not have any impact on entities already within the scope of CSSF Regulation 16-07.

Ireland intends to comply with these guidelines which took effect from 1 May 2019.

1.10 EuSEF and EuVECA Delegated Regulations on Conflicts

On 11 June 2019, Commission Delegated Regulation (EU) 2019 / 819 supplementing the EuSEF Regulation EU / 346 / 2013 with regard to conflicts of interest, social impact measurement and information to investors came into force. It sets out:

(a) The types of conflicts of interest which managers of qualifying EuSEFs need to identify and manage;

(b) The details of procedures to measure the extent to which qualifying portfolio undertakings, in which the EuSEF invests, achieve the impact to which they are committed (Article 10); and

(c) The content of investor information under Article 14.

Also on 11 June 2019, Commission Delegated Regulation (EU) 2019 / 820 supplementing the EuVECA Regulation EU / 345 / 2013 with regard to conflicts of interest in EuVECAs which specifies the types of conflicts of interest, referred to in Article 9 of the EuVECA Regulation, and the steps that managers of EuVECA funds need to take to identify, prevent, manage, monitor and disclose conflicts came into force.

Both will apply from 11 December 2019.

1.11 Shareholders' Rights Directive II

The Shareholders' Rights Directive EU / 2017 / 828 ("SRD II") which amends the existing Shareholders' Rights Directive 2007 / 36 / EC ("SRD") was due to be transposed by all EU Member States by 10 June 2019.

Ireland

The regulations to transpose SRD II into Irish law have yet to be published but are expected shortly.

SRD II applies to companies which have a registered office in a member state and whose shares are admitted to trading on a regulated market or operating in a member state. It impacts institutional investors (insurers and pension funds) and asset managers (MiFID firms providing portfolio management services, AIFMs, UCITS management companies and self-managed UCITS) by imposing an obligation to provide greater transparency on their shareholder engagement policy, on how they engage with companies they or their clients invest in and on their equity strategy.

For investment funds, it creates an obligation to put a shareholder engagement policy in place and new transparency requirements that will apply to asset managers. While it is expected that Ireland will exercise its discretion to exempt asset managers from many SRD II requirements including the provisions relating to the director remuneration, identification of shareholders and the facilitation of the exercise of shareholder rights, as it did with SRD, the publication of the implementing regulations is necessary to confirm this.

Luxembourg

Bill of Law n° 7402 which will implement SRD II in Luxembourg was introduced into Luxembourg Parliament on 4 February 2019. The current draft exempts investment funds subject to the law of 17 December 2010 relating to undertakings for collective investment or that qualify as AIFs under the law of 12 July 2013 on alternative investment fund managers from all SRD II requirements, except for those relating to transparency. Asset managers will also need to comply with the transparency obligations.

1.12 EU Securitisation Regulation

Regulation (EU) 2017 / 2402 on a general framework for securitisation and creating a specific framework for simple, transparent and standardised ("STS") securitisations ("Securitisation Regulation") and Regulation (EU) 2017 / 2401 amending the Capital Requirements Regulation 575 / 2013 / EU applies to securitisations the securities of which are issued on or after 1 January 2019 or which create new securitisation positions on or after that date. It impacts both AIFs and UCITS. AIF managers' due diligence, transparency and risk retention requirements

under AIFMD were replaced by the Securitisation Regulation. It also brings UCITS management companies and internally managed UCITS that are authorised investment companies into the framework.

Ireland

The European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018 which came into force on 1 January 2019 designates the Central Bank as the competent authority in Ireland for STS securitisations.

Luxembourg

Bill of law n° 7349 which will implement provisions of the Securitisation Regulation in Luxembourg was introduced into Luxembourg Parliament on 6 August 2018 but has not yet been finalised.

On 15 May 2019, the CSSF published CSSF Circular 19 / 719 ("Circular 19 / 719") adopting the two EBA guidelines on STS criteria in relation to asset backed commercial papers ("ABCP") and non-ABCP securitisations as foreseen by the Securitisation Regulation. Circular 19 / 719 took effect on 15 May 2019. The guidelines provide a single point of consistent interpretation of the STS criteria and ensure a common understanding of them by the originators, original lenders, sponsors, securitisation special purpose entities, investors, competent authorities and third parties verifying STS compliance and will be applied on a cross-sectoral basis throughout the EU with the aim of facilitating the adoption of the STS criteria, which is one of the prerequisites for the application of a more risk-sensitive regulatory treatment of exposures to securitisations compliant with such criteria, under the new EU securitisation framework.

EU developments

On 27 May 2019, ESMA updated its Q&As on the Securitisation Regulation which provides further indicative guidance on templates contained in ESMA's draft technical standards on disclosure requirements and also covers notifications to ESMA of STS securitisations.

On 28 May 2019, the European Commission adopted a Delegated Regulation relating to RTS on the homogeneity of the underlying exposures in securitisation which establishes a set of conditions for the underlying exposures of a securitisation to be deemed homogeneous. It also specifies asset types prevalent in the securitisation market and lists homogeneity factors that should be considered for those asset types. The Delegated Regulation is subject to scrutiny by the European Parliament and the Council before it can be published and enter into force.

1.13 Integrating Sustainability Risks and Factors: UCITS Directive, AIFMD and MiFID II

On 3 May 2019, ESMA published two final reports on technical advice to the European Commission on integrating sustainability risks and factors relating to environmental, social and good governance ("ESG") considerations with regards to investment funds and investment firms in the UCITS Directive and AIFMD; and MiFID II. ESMA consulted on the draft technical advice in December 2018.

ESMA's advice recommends changes to the UCITS and AIFMD Level 2 legislation with respect to organisational requirements, operating conditions and risk management.

On organisational requirements, ESMA recommends that legislation is amended to ensure that all UCITS management companies and AIFMs take into account sustainability risks in their processes, systems and controls, devote sufficient resources to the integration of sustainability risks and ensure that senior management is responsible for the integration of sustainability risks.

On operating conditions, changes are recommended to ensure that fund managers take into account sustainability risks in their due diligence processes and consider conflicts of interests that may arise in relation to the integration of sustainability risks. Similarly, on risk management it is recommended that sustainability risks are included in the list of material risks to be managed by UCITS management companies and AIFMs

The Commission's sustainable finance initiatives form part of its broader plan to establish the Capital Markets Union ("CMU"). ESMA explains in a related press release that its initial consultations on this topic contained a separate paper on guidelines for disclosure requirements applicable to credit ratings (including the consideration of ESG factors). It expects to publish the final report of this paper by the end of July 2019. ESMA will work with the Commission to turn the advice into formal delegated acts.

1.14 ESMA Consults on Short-Termism in Financial Markets

On 25 June 2019, ESMA published a questionnaire which aims to gather evidence on potential short-term pressures on corporations stemming from the financial sector. Considering the impact of short-termism forms part of ESMA's work on sustainable finance and relates to the European Commission's Action Plan on Financing Sustainable Growth.

ESMA invites investors, issuers, UCITS management companies, self-managed UCITS investment companies, AIFMs and the trade associations of financial market participants to respond to the questionnaire. Responses will contribute to ESMA's analysis of potential sources of undue short-termism on corporations to identify areas in which existing rules may contribute to mitigating undue short-termism and areas where the rules may exacerbate short-term pressures. By December 2019 ESMA will deliver a report to the European Commission based on its findings.

1.15 Benchmark Regulation

The Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds 2016 / 1011 / EU ("BMR") applies since 1 January 2018.

On 23 May 2019, ESMA issued an update of its Q&As on the BMR which provide clarification on the:

(a) Relevant time to determine the member state of reference in an application for recognition under Article 32(4);

(b) Information on which national competent authorities ("NCAs")may rely on in an external audit report of compliance with the IOSCO principles for oil reporting agencies under Article 32(2); and

(c) Type of information that should be included in the field "contact info" of ESMA's register of benchmark administrators.

On 19 June 2019, ESMA issued the official translations of its Guidelines on non-significant benchmarks under the BMR. NCAs, to which these Guidelines apply, must notify ESMA whether they comply or intend to comply with them within two months of the date of publication.

1.16 MiFID II / MiFIR Update

The Markets in Financial Instruments Directive (2014 / 65 / EU) ("MiFID II") and the Markets in Financial Instruments Regulation (Regulation 600 / 2014) ("MiFIR") apply from 3 January 2018. The European Union (Markets in Financial Instruments) Regulations 2017 and the Markets in Financial Instruments Act 2018 transposed MiFID II into Irish law. The law of 30 May 2018 on markets in financial instruments transposed MiFID II into Luxembourg law ("2018 Law").

Delegated Regulation (EU) 2019 / 442 correcting Delegated Regulation (EU) 2017 / 587 under MiFIR to specify the requirement for prices to reflect prevailing market conditions and to update certain provisions and Delegated Regulation (EU) 2019 / 443 amending Delegated Regulation (EU) 2017 / 588 as regards the possibility to adjust the average daily number of transactions for a share where the trading venue with the highest turnover of that share is located (MiFID II tick size regime) came into force on 9 April 2019.

On 24 May 2019, ESMA published a call for evidence on position limits and position management in commodity derivatives so that it can provide advice to the European Commission for its report on the impact of position limits and position management on commodity derivatives markets by 31 March 2020.

On 27 May 2019, ESMA published an updated opinion to help market participants assess whether their commodity derivatives activities can be considered as ancillary to their main business under MiFID II.

On 3 June 2019, ESMA published a supervisory briefing to ensure compliance with the MiFIR pre-trade transparency requirements in commodity derivatives after it became aware that the provisions were not implemented in a consistent manner across the EU. It has launched a common supervisory action with NCAs on the appropriateness requirements under MiFID II.

On 5 June 2019, ESMA announced the publication of the official translations of its amended guidelines on the application of C6 and C7 of Annex I of MiFID II (commodity derivatives definitions) which means that they will apply from 5 August 2019.

On 11 June 2019, ESMA published its final report following a call for evidence on frequent batch auctions, a type of periodic auction trading system for equity instruments under MiFID II and MiFIR.

On 13 June 2019, ESMA updated its register of derivatives to be traded on-venue under MiFIR.

On 22 June 2019, Delegated Regulation (EU) 2019 / 1011 amending Delegated Regulation (EU) 2017 / 565 which supplements MiFID II as regards certain registration conditions to

promote the use of small and medium-sized enterprise growth markets entered into force. It will apply from 11 October 2019.

On 25 June 2019, published a letter it wrote to European Commission on delaying the review of certain MiFID II transparency requirements due to Brexit.

Over the quarter ESMA updated its MiFID II / MiFIR Q&As on transparency topics; commodity derivatives; market structures; MiFIR data reporting; and investor protection and intermediaries topics.

Ireland

On 13 June 2019, the Central Bank confirmed that once ESMA's MiFIR product intervention measures expire, it will use its product intervention powers under MiFIR to restrict the sale of contracts for difference and ban the sale of binary options to retail clients.

Luxembourg

On 10 April 2019, the CSSF published CSSF circular 19 / 716 ("Circular 19 / 716") relating to the provision in Luxembourg of investment services or the performance of investment activities and ancillary services by third country firms ("TCFs") in accordance with Article 32-1 of the law of 5 April 1993 on the financial sector, as amended ("1993 Law"). The publication of Circular 19 / 716 follows the implementation of MiFID II into Luxembourg and the related amendments to existing Luxembourg legislation.

Circular 19 / 716 provides guidance on (i) the various regimes available to TCFs under Article 32-1 of the 1993 Law as well as the conditions to be met and the information and documentation to be submitted in this respect; and (ii) reverse solicitation as well as the possibility to provide services on this basis.

For more information see our client update: MiFID II CSSF Issues New Circular on Third Country Firms Access

1.17 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, central counterparties ("CCPs") and trade repositories ("TRs") (Regulation 648 / 2012)) ("EMIR") is relevant to all Irish and Luxembourg funds trading in financial derivative instruments ("FDI") whether on an exchange or otherwise. UCITS and AIFs are financial counterparties ("FCs") for EMIR purposes and subject to the full scope of EMIR obligations.

There have been a number of developments over the quarter:

On 30 April 2019, Delegated Regulation (EU) 2019 / 667 amending RTS on the clearing obligation under EMIR to extend the dates of deferred application of the clearing obligation for certain OTC derivatives contracts came into force. It amends Delegated Regulations (EU) 2015 / 2205, (EU) 2016 / 1178 and (EU) 2016 / 592 to extend the temporary exemptions in all three until 21 December 2020.

The regulation will apply from that date, with the exception of Articles 4(1) to (5), Articles 5(1) and (2), Article 15 and Article 16, which will apply from 24 months after the date of entry into force.

EMIR Refit Regulation

The central clearing obligation under EMIR has been implemented gradually since 21 June 2016. Following publication in the Official Journal of the OJ on 28 May 2019, Regulation (EU) 2019 / 834 amending EMIR entered into force on 17 June 2019. Except for certain provisions specified in Article 2, it applies from that date.

The EMIR Refit Regulation expands the definition of a FC to encompass additional categories and introduces a new regime for determining when FCs and non-financial counterparties ("NFCs") are subject to clearing, depending on whether their positions exceed the clearing threshold. Therefore every AIF established in the EU or managed by an AIFM authorised or registered in the EU under AIFMD and any AIFM established in the EU of such an AIF are now FCs. Further central securities depositaries are now FCs also.

The changes to the clearing thresholds mean that FCs whose OTC derivative positions do not exceed any of those thresholds (small FCs) are now exempt from the clearing obligation. In addition, NFCs whose positions exceed at least one of the clearing thresholds will be subject to the clearing obligation only for the derivatives belonging to the asset class for which the clearing threshold has been exceeded.

The EMIR Refit Regulation also requires competent authorities to validate risk management procedures or any significant change to those procedures, before they are applied and clarifies who is responsible for reporting in specific circumstances.

On 28 May 2019, ESMA updated its EMIR Q&As regarding the implementation of the EMIR Refit Regulation on:

(a) The clearing obligation for FCs and NFCs;

(b) The procedure for notifying when a counterparty exceeds or ceases to exceed the clearing thresholds; and

(c) How counterparties should report derivatives novations and removes some obsolete references to frontloading when populating field "Clearing Obligation".

It also amends Q&A 20 in the OTC Section, clarifying that for the purpose of applying the clearing obligation, all types of novations of derivative contracts are covered.

On 14 June 2019, ESMA further updated its Q&A on EMIR data reporting which clarify the:

(a) Calculation framework towards the clearing thresholds (Q&A OTC 3); and

(b) Notifications to be made by market participants to their competent authorities to apply an intragroup exemption from reporting (TR Q&A 51).

On 14 June 2019, ESMA also published a letter to the European Commission on the interpretation of the EMIR hedging exemption for calculation of clearing thresholds for non-financial groups following the EMIR Refit Regulation amendments. It requests clarification of the correct interpretation of the applicable provision for FCs with NFCs in their group.

1.18 PRIIPs KID Regulation

The EU Regulation on key information documents ("KIDs") for packaged retail and insurance-based investment products ("PRIIPs") (Regulation 1286 / 2014) ("PRIIPs KID Regulation") introduced a new pan-European pre-contractual product disclosure document for PRIIPS in EU Member States on 1 January 2018.

On 4 April 2019, the Joint Committee of the ESAs published an updated version of its Q&As to include new Q&As on:

(a) General topics: this contains a new Q&A on what aspects should be considered by the manufacturer when determining the recommended holding period or RHP of a PRIIP; and

(b) Multi-option products or MOPs: a new Q&A on the form and name that "specific information on each underlying investment option", referred to in Article 14(1) of the Delegated Regulation should take.

On 13 May 2019, ESMA published a speech on its current priorities. It notes the beginning of its review the PRIIPs Delegated Regulation (EU) 2017 / 653 and expects to consult publicly in Q3 2019. The review will include proposals to review the performance scenarios section of the PRIIPs KID which show over-optimistic results in certain cases. It will also cover cost related issues, such as the presentation and calculation of costs. It will be complemented by a consumer testing exercise undertaken by the Commission on the different possible amendments to be made to the presentation of performance scenarios.

1.19 SFTR Update

The SFTR (or Regulation on securities financing transactions ("SFTs") EU / 2015 / 2365 covers all forms of lending, borrowing and re-use of securities in the EU and in all the branches of counterparties to SFTs no matter where they are located. It requires market participants to report details of SFTs to an approved EU trade repository and introduced new transparency requirements for prospectuses and financial statements for investment funds using securities financing transactions and total return swaps.

On 27 May 2019, ESMA opened a public consultation on draft guidelines on how to report SFTs. It seeks views on future ESMA guidelines on reporting which will complement the SFTR technical standards and ensure the consistent implementation of the new rules. The technical standards on reporting entered into force on 11 April 2019 and the reporting for credit institutions and investment firms will start one year later with a phased-in application for the rest of entities until January 2021.

The guidelines include general principles that apply to SFT reporting, including how the reports should be constructed and where the reports should be sent. ESMA expects to publish a final report on the guidelines in Q4 2019.

1.20 Capital Requirements Regulation Update

The Capital Requirements Regulation 575 / 2013 / EU ("CRR") applies to credit institutions and investment firms and contains provisions relating to, among other things, own funds and capital requirements, large exposures, securitisations, liquidity, leverage and supervisory reporting.

On 24 May 2019, ESMA published a consultation paper (which closes on 5 July 2019) proposing amendments to the main indices and recognised exchanges under the CRR. ESMA wants to amend the ITS to ensure that the most updated list of main indices and recognised exchanges is incorporated into the legislative text.

On 27 June 2019, Regulation (EU) 2019 / 876 amending the CRR (CRR II Regulation) as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to CCPs, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and Directive (EU) 2019 / 878 amending the CRD IV Directive 2013 / 36 / EU came into force. The CRR II Regulation will apply from 28 June 2021 with the exception of measures listed in Article 3. Member states have to adopt measures to comply with the CRD IV Directive by 28 December 2020 and to apply them from 29 December 2020, with the exception of those in Article 2.

Note that the proposed Investment Firms Regulation and Investment Firms Directive will, for most existing investment firms, replace the existing prudential requirements for investment firms set out in the CRR and the CRD IV Directive once finalised by the EU. Negotiations between the European Council and the Parliament are the next step in this process. See "Proposed Investment Firms Regulation and Directive" below.

1.21 Proposed Investment Firms Regulation and Directive

On 16 April 2019, the European Parliament published the texts it has adopted at first reading on the proposed reforms to investment firms' prudential requirements:

(a) Legislative resolution on the proposed Directive on the prudential supervision of investment firms (Investment Firms Directive or IFD); and

(b) Legislative resolution on the proposed Regulation on the prudential requirements of investment firms (Investment Firms Regulation or IFR).

This new regulatory regime will, for most existing investment firms, replace the existing prudential requirements for investment firms in the CRR and the CRD IV Directive and will also amend MiFID II and MiFIR. It will divide investment firms into three classes depending on size and systemic relevance and apply different rules to each category. The next step is for the Council of the EU to adopt the proposals at first reading.

1.22 First Pan-EU Overview of Use of Supervisory Sanctions for UCITS

On 4 April 2019, ESMA published its first annual report on sanctions imposed by NCAs under the UCITS Directive 2009 / 65 / EC. Under the Directive, NCAs can impose sanctions for infringements of its provisions.

The report contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive. It covers the periods between 1 January 2016 and 31 December 2016, and 1 January 2017 and 31 December 2017.

1.23 Central Bank Annual Report and Annual Performance Statement

The Central Bank's 2018 Annual Report and 2018-2019 Annual Performance Statement were published on 29 May 2019. They outline the scale and variety of work undertaken in 2018 in the context of Brexit and enforcement actions and, more specifically, in the various sectors (banking, insurance and so on). In the area of asset management and investment banking supervision the focus was on MiFID II implementation, Investor Money Regulations compliance, cyber risk, governance and internal controls and UCITS performance fees.

1.24 LIBOR Interest Rate Benchmark – Phasing Out

Work on reforms to interbank offered rates ("IBORs") and the development of overnight risk-free rates ("RFRs") and term rates is ongoing. The UK FCA is phasing out the LIBOR interest rate benchmark from 31 December 2021. The FCA is urging those still creating new contracts referencing LIBOR, and have a contract life beyond end-2021, to move to the new RFRs whose continued publication beyond that date can be relied on. Funds and fund managers need to start considering their options now to prepare for the transition.

1.25 Irish Investment Funds Statistics: Q1 2019

The main points to note in the Central Bank's June 2019 Q1 2019 update are as follows:

(a) The net asset value ("NAV") of Irish resident investment funds increased by 12% to €2,159 billion in Q1 2019, reflecting strong gains in equities and debt securities and significant net subscriptions. Revaluation gains of €175 billion were seen across all fund types and net subscriptions amounted to €49 billion. All fund types saw net subscriptions, with the exception of hedge funds, which saw net redemptions;

(b) Total assets held by Irish investment funds grew by €258 billion to €2,586 billion in Q1 2019 driven by net transactions of €65 billion and revaluations of €194 billion;

(c) All fund types except hedge funds recorded net purchases of assets during Q1 2019. Hedge funds saw net sales of assets of €7 billion, driven by transactions on derivatives;

(d) All fund types recorded an increase in the value of their assets;

(e) Irish resident investment fund holdings of debt securities increased strongly from €929 billion at end December to €1,031 billion at end March. Growth was seen across all issuer sectors;

(f) Equity holdings of funds (including shares / units of other funds) increased from €1,001 billion at end December to €1,131 billion at end March 2019; and

(g) Irish resident exchange traded funds grew strongly over Q1, rising by €65 billion to €434 billion in Q1 2019.

1.26 Undertakings for Collective Investment Statistics – Luxembourg

The main points to note in the CSSF's April 2019 update are as follows:

(a) Total assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") increased €54,487 billion from €4,350.449 billion as at March 2019 to €4,404.936 billion as at April 2019;

(b) The number of Luxembourg Investment Funds active in the market and regulated by the CSSF increased from 3,868 to 3,871 during April 2019;

(c) From the 3,871 active Luxembourg Investment Funds, 2,513 have adopted an umbrella structure and have together a total of 13,553 sub-funds. The remaining 1,358 Luxembourg Investment Funds are structured as stand-alone funds;

(d) As at April 2019, there were a total of 14,911 sub-funds;

(e) During April 2019, there were more redemptions than subscriptions in equity funds despite positive performance across all categories of equity funds; and

(f) During April 2019, there were more subscriptions than redemptions in fixed-income funds.

2 Tax

2.1 Irish Revenue Updates FATCA Guidance

Irish Revenue has recently updated its published FATCA guidance notes to reflect recent changes to the IGA between Ireland and the US. In particular, the sections on Sponsored Investment Entities and Sponsored Controlled Foreign Corporations have been updated to reflect additions to Annex II of the FATCA IGA and the sections have been moved from the section covering Registered Deemed Compliant Financial Institutions to the section covering Self-Certified Deemed Compliant Financial Institutions. In addition, the section on Sponsored, Closely Held Investment Vehicles has been changed to reflect the text in the updated FATCA IGA.

Previously, Sponsored Investment Entities were included in the guidance notes as Registered Deemed Compliant Financial Institutions, which meant that the Sponsored Investment Entity had to register for a GIIN with the IRS regardless of whether the Sponsored Investment Entity actually had any FATCA reportable accounts. Now, the guidance states that the Sponsoring Entity will only be required to register the Sponsored Investment Entity for a GIIN if the Sponsoring Entity identifies US Reportable Accounts.

For those unfamiliar with the concept of "sponsoring" under FATCA, it is a mechanism which allows an entity to "sponsor" other entities and the Sponsoring Entity then performs the due diligence, withholding and reporting obligations on behalf of the sponsored entities. A Sponsoring Entity must be authorised to act on behalf of the Financial Institution to fulfil applicable registration requirements on the IRS FATCA registration website and for this reason

the role tends to be undertaken by the fund manager or trustee in the context of investment funds. It can offer a single point of reporting and registration where funds under management have few US Reportable Accounts.

In related news, on 21 March 2019, the IRS issued final FATCA regulations dealing with certain compliance and verification requirements for sponsored entities. The final regulations require a Sponsoring Entity to have some form of written sponsorship agreement in place with its Sponsored Entities although the agreement does not need to be a standalone FATCA sponsorship agreement. It is possible for an existing agreement between a Sponsoring Entity and Sponsored Entity to refer generally to the obligations of the parties under FATCA, but there must be a specific reference to satisfying the FATCA obligations of the Sponsored Entity. In a fund context, these provisions would most likely be covered in the investment management agreement or similar.

2.2 Luxembourg: 2019 State Budget Law Passed

On 25 April 2019, the Luxembourg Parliament approved the 2019 State Budget Law, which included a reduction in the Luxembourg corporate tax rate from 18% down to 17%. This 1% drop in the corporate income tax rate results now in an aggregate Luxembourg corporate tax rate of 24.94% (taking into account the Luxembourg City municipal business tax and the 7% solidarity surcharge), which is down from 26.01%. The changes take effect as from 1 January 2019.

Additionally, the 2019 State Budget Law includes a provision that allows Luxembourg fiscal unity groups to apply the ATAD 1 interest limitation rules at the fiscal unity level. Generally, the ATAD 1 interest limitation rules limit "excess borrowing costs" to the higher of 30% of EBITDA or €3,000,000. Now Luxembourg fiscal unity groups can apply this at the group level on election.

The new law also expanded the super-reduced VAT rate of 3% to books and other publications, both in physical and electronic versions, though only as from 1 May 2019.

2.3 Luxembourg Deposits its Ratification of the Multilateral Instrument with the OECD

On 9 April 2019, Luxembourg deposited proof of its ratification of the Multilateral Instrument ("MLI") with the OECD. It could amend potentially all 81 of Luxembourg's double tax treaties to the extent the treaty partner country also agrees and ratifies the MLI. The MLI contains several provisions which aim to prevent tax treaty shopping and other perceived abuses. Among the MLI's provisions, the most notable is the vaguely worded "principal purpose test" ("PPT") which can deny tax treaty benefits (e.g. such as reduced withholding taxes) if "obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit." Whether one of Luxembourg's double tax treaties is covered by the MLI will depend on the status of the treaty partner country's election to also have the treaty covered by the MLI and if it too has gone through the ratification and deposit process. Currently, only approximately 25 of Luxembourg's 81 tax treaties will be covered by the MLI as from 1 February 2020.

For more information see our client update: Luxembourg Ratifies the BEPS Multilateral Instrument

3 Listing

3.1 Updated Listing Rules and Listing Code for Funds

Euronext is the leading pan-European exchange which includes the Irish Stock Exchange plc, trading as Euronext Dublin.

The new Euronext Rule Book ("Book I") which contains the harmonised rules, including rules of conduct and of enforcement, designed to protect the markets, as well as rules on listing, trading and membership came into force on 20 May 2019. Euronext Dublin updated its Euronext Dublin Rule Book - Book II: Listing Rules which contain the non-harmonised rules on 28 May 2019. It also updated its Code of Listing Requirements and Procedures - Investment Funds which apply to applicant funds or sub-funds and listed funds from the same date. Book I and, in particular, Chapter 6 contains the admission to trading rules for all of the Euronext jurisdictions. Book II contains the listing rules which are specific to Euronext Dublin and the Code contains the listing rules for Investment Funds which are specific to Euronext Dublin. The Code and Book II should be read in conjunction with Book I and will cross refer to those rules from Chapter 6 of Book I which are applicable. The revisions are not material but the layout and numbering has changed.

3.2 LEIROC Report: Fund Relationships in GLEIS

On 20 May 2019, the Legal Entity Identifier Regulatory Oversight Committee ("LEIROC") published its policy on fund relationships in the global legal entity identifier system ("GLEIS"). It requests the Global LEI Foundation ("GLEIF") to replace the current optional reporting of a single "fund family" relationship with the following: fund management entity relationships; umbrella structures; and master-feeder relationships.

The aim is to ensure implementation of relationship data that is consistent throughout the GLEIS and to facilitate a standardised collection of fund relationship information at the global level. Collection of these relationships in the GLEIS will be optional, except if the relationship is mandated to be reported and for relationships between an umbrella structure and a sub-fund.

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