

Asset management and investment funds

Legal and regulatory developments

Covering the period
1 October to 31 December 2023



Key Dates	
2023	
1 December 2023	Operational resilience action plans taking account of the Central Bank's operational resilience guidance to be in place.
13 December 2023	The Central Bank's enhanced guidelines on its administrative sanctions procedures entered into force.
20 December 2023	Outsourcing Register filing deadline (reference date 31 December 2022) for in-scope fund management companies.
29 December 2023	Effective date for compliance with the common and additional conduct standards and changes to the fitness and probity regime pursuant to the Individual Accountability Framework.
2024	
1 January 2024	UCITS authorised prior to 1 January 2023 and RIAIFs that are required to produce a PRIIPs KID can commence to make the initial submission of the PRIIPs KID via the Central Bank portal.
1 January 2024	Taxonomy Delegated Acts with technical screening criteria for the remaining environmental objectives under the EU Taxonomy Regulation apply.
10 January 2024	Application date of the revised ELTIF Regulation.
29 April 2024	EMIR REFIT revised guidelines and technical documentation come into effect necessitating updates to EMIR reporting.
24 May 2024	In-scope funds investing over 50% of their portfolio in directly or indirectly held Irish property assets ("Property Funds") to take action to ensure their liquidity timeframes comply with the Central Bank's guidance on redemption terms for Property Funds.
27 May 2024	Revised additional capital requirements and internal capital assessment rules apply to fund management companies authorised to provide individual portfolio management services.
28 May 2024	Funds having exposures to US securities to complete review of their trading and settlement procedures ahead of the SEC transition to a T+1 settlement cycle.
30 June 2024	Fund management companies to complete a review of their asset valuation frameworks.

This is a condensed version of our Asset Management and Investment Funds Legal and Regulatory Report setting out key developments during the quarter.

1.	AIFMD Developments	10
1.1	Agreement on final political text of AIFMD II (<i>This is a further update to section 1.1 of the quarterly report covering the third quarter of 2023</i>).....	10
1.2	AIFMD Q&A updated (48 th edition)	10
1.3	AIFMD Q&A updated (49 th edition)	10
1.4	European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2023.....	11
1.5	AIF Rulebook (updated November 2023) (<i>This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022</i>).....	11
1.6	Commission adopts delegated legislation on cross-border notifications under AIFMD (<i>This is a further update to section 4.6(j) of the quarterly report covering the fourth quarter of 2022</i>).....	12
2.	UCITS Developments	12
2.1	UCITS Q&A updated (40 th edition)	12
2.2	European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023.....	12
2.3	Central Bank UCITS Regulations (S.I. No. 565 of 2023) (<i>This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022 and section 1.5 of this report</i>)	13
2.4	Commission adopts delegated legislation on cross-border notifications under the UCITS Directive (<i>This is a further update to section 4.6(j) of the quarterly report covering the fourth quarter of 2022</i>).....	13
3.	Central Bank Updates	14
3.1	Consultation paper on ELTIF chapter of the AIF Rulebook (<i>This is a further update to section 2.2 of the quarterly report covering the third quarter of 2023 and section 4.4(a) of this report</i>)	14
3.2	Central Bank finalises Individual Accountability Framework ("IAF") Standards and Guidance (<i>This is a further update to section 3.6 of the quarterly report covering the first quarter of 2023</i>)	14
3.3	CP154 Feedback Statement and Administrative Sanctions Guidelines (<i>This is a further update to section 3.4 of the quarterly report covering the second quarter of 2023</i>)	15
3.4	Central Bank feedback statement to CP152 (<i>This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022</i>).....	16
3.5	Enforcement action concerning breach of EMIR reporting	17

3.6	Industry letter on asset valuation (<i>This is a further update to section 3.6(e) of the quarterly report covering the second quarter of 2023</i>)	17
3.7	Market-based finance monitor 2023	18
3.8	Systemic risk analysis	18
3.9	Financial Stability Review 2/2023 (<i>This is a further update to section 3.1 of the quarterly report covering the second quarter of 2023</i>)	19
3.10	Funding Strategy and Guide to the 2023 Industry Funding Regulations.....	20
3.11	Beneficial ownership guidance updated (<i>This is a further update to section 4.1 of the quarterly report covering the second quarter of 2023 and section 2.14 of the quarterly report covering the third quarter of 2023</i>)	20
3.12	Central Bank markets updates	21
3.13	Notice of year-end submission deadlines	22
3.14	Consultation paper CP157 on macroprudential measures for GBP LDI funds (<i>This is a further update to section 2.8 of the quarterly report covering the third quarter of 2023</i>)	22
3.15	Consultation paper CP156 on its approach to innovation engagement in financial services.....	22
3.16	Industry communication on conduct risk assessment on telephone and electronic communications.....	23
3.17	Dear CEO letter on MiFID II costs and charges disclosure requirements.....	23
3.18	Central Bank speeches during the period.....	24
	(a) <i>An evolving supervisory approach in the funds sector</i>	24
	(b) <i>Implementing DORA (This is a further update to section 3.5(l) of the quarterly report covering the third quarter of 2023)</i>	25
	(c) <i>Putting principles into practice: how regulation responds to change</i>	26
	(d) <i>Private assets: A changing European landscape</i>	26
	(e) <i>Maintaining stability in the face of volatility – financial regulation in a rapidly changing world</i>	27
	(f) <i>Navigating market abuse and regulatory surveillance</i>	27
	(g) <i>Walking the path – the transition to Net-Zero</i>	27
	(h) <i>Consumer code and business ethics</i>	27
3.19	Investment Fund Statistics Q3 2023.....	28
4.	Other Legal And Regulatory Developments	28
4.1	Companies (Miscellaneous Provisions) (Covid-19) Act 2020.....	28
4.2	Central Securities Depositories Regulation 909/2014 ("CSDR")	29

	(a)	<i>Regulation (EU/2845/2023) amending the CSDR ("CSDR Refit Regulation") (This is a further update to section 3.5 of the report covering the second quarter of 2023)</i>	29
	(b)	<i>Consultation on technical advice on CSDR penalty mechanism</i>	29
4.3		Department of Finance	29
	(a)	<i>Funds sector review 2030 updates (This is a further update to section 4.3(c) of the report covering the second quarter of 2023)</i>	29
	(b)	<i>Finance (No.2) Act 2023 (This is a further update to section 4.4(g) of the report covering the second quarter of 2023)</i>	31
4.4		ESMA & the European Supervisory Authorities (the " ESAs ")	31
	(a)	<i>Final report on ELTIF regulatory technical standards (This is a further update to section 4.6(a) of the quarterly report covering the second quarter of 2023 and section 3.1 of this report)</i>	31
	(b)	<i>New Union Strategic Supervisory Priority ("USSP") (This is a further update to section 4.6(b) of the quarterly report covering the fourth quarter of 2023)</i>	32
	(c)	<i>ESMA chair remarks on the role of asset management</i>	33
	(d)	<i>Guidelines for reporting under EMIR (This is a further update to section 4.5 of the report covering the fourth quarter of 2022)</i>	34
	(e)	<i>Final report on amendments to position guidelines under EMIR</i>	34
	(f)	<i>PRIIPs KID Q&A (updated) (This is a further update to section 4.13 of the report covering the fourth quarter of 2022)</i>	34
	(g)	<i>ESAs consultation on second set of RTS, ITS and guidelines under DORA (This is a further update to section 4.6(g) of the report covering the second quarter of 2023)</i>	35
	(h)	<i>Statement on the effective application of the Markets in Crypto Assets Regulation (EU) 2023/1114 ("MiCA") (This is a further update to section 4.2(d) of the report covering the second quarter of 2023)</i>	35
	(i)	<i>ESAs proposed extension of the EMIR equity option exemption</i>	35
	(j)	<i>Report on independence of supervisory authorities</i>	36
	(k)	<i>Verena Ross speech on ESMA's data strategy (This is a further update to section 4.6(v) of the quarterly report covering the second quarter of 2023)</i>	36
	(l)	<i>Report on costs and performance of EU retail investment products</i>	37
	(m)	<i>Guidelines on stress testing scenarios under the Money Market Funds Regulation ("MMFR")</i>	37
	(n)	<i>Discussion paper on digitalisation</i>	37
	(o)	<i>New Q&As MiFID, MiFIR and BMR</i>	37

	(p)	<i>BMR Brexit statement (updated)</i>	38
	(q)	<i>Call for evidence on shortening the settlement cycle</i>	38
4.5		European Commission (the " Commission ").....	38
	(a)	<i>Work programme for 2024</i>	38
	(b)	<i>Directive on distance marketing of financial services contracts</i>	39
	(c)	<i>Emergency measures on central counterparty ("CCP") collateral requirements under EMIR</i>	40
	(d)	<i>Regulation (EU) 2021/0378 on European single access point (the "ESAP") (This is a further update to section 4.1(a) of the report covering the fourth quarter of 2022)</i>	40
4.6		Financial Action Task Force (" FATF ").....	40
4.7		Financial Stability Board (" FSB ").....	41
	(a)	<i>Report on non-bank financial intermediation ("NBFI")</i>	41
	(b)	<i>Recommendations on liquidity mismatch in open-ended funds ("OEFs") (This is a further update to section 3.9 of the report covering the third quarter of 2023)</i>	41
4.8		Screening of Third Country Transactions Act 2023 (the " Act ") (This is a further update to section 3.10 of the report covering the third quarter of 2023).....	41
4.9		UK Financial Conduct Authority (" FCA ").....	42
	(a)	<i>Consultation on implementing the overseas funds regime ("OFR") (This is a further update to section 3.8 of the report covering the third quarter of 2023)</i>	42
	(b)	<i>Speech on updating and improving UK regime for asset management</i>	42
4.10		IOSCO.....	43
	(a)	<i>Final report on policy recommendations for crypto and digital asset markets</i>	43
	(b)	<i>Guidance on anti-dilution liquidity management tools ("LMT") (This is a further update to section 3.11(a) of the report covering the third quarter of 2023)</i>	43
	(c)	<i>Statement on online harm</i>	43
	(d)	<i>Asset management in turbulent times: challenges and opportunities</i>	44
4.11		Sustainable Finance - ESG developments.....	44
	(a)	<i>ESAs final report on the review of PAI and financial product disclosures in the SFDR (This is a further update to section 3.13(f) of the report covering the second quarter of 2023)</i>	44
	(b)	<i>ESMA public statement - update on the guidelines on funds' names using ESG or sustainability-related terms (This is a further update to section 3.14(g) of the report covering the first quarter of 2023)</i>	45

(c)	<i>Responses to Commission consultation on the implementation of the SFDR (This is a further update to section 3.12(a) of the report covering the third quarter of 2023)</i>	46
(d)	<i>Taxonomy delegated acts published in OJ (This is a further update to section 3.13(c) of the report covering the second quarter of 2023)</i>	47
(e)	<i>Draft Commission notice - Disclosures Delegated Act under the Taxonomy</i>	47
(f)	<i>Publication in the OJ of Taxonomy notices (This is a further update to section 4.15(h) of the quarterly report covering the fourth quarter of 2022)</i>	48
(g)	<i>ESMA explanatory notes - key sustainable finance topics</i>	48
(h)	<i>Corporate Sustainability Due Diligence Directive ("CSDDD") update</i>	50
(i)	<i>ESMA CSA on ESG disclosures under BMR</i>	50
(j)	<i>Report on Taxonomy-aligning benchmarks</i>	51
(k)	<i>ESA sustainable finance education factsheet</i>	51
(l)	<i>European green bond standard (This is a further update to section 3.14(f) of the report covering the first quarter of 2023)</i>	51
(m)	<i>UK sustainability disclosure requirements</i>	52
(n)	<i>Euronext publishes ESG company profiles</i>	52
(o)	<i>Central Bank publications (climate finance week)</i>	52
(p)	<i>ECB-ESRB joint-report on the impact of climate change on the EU financial system</i>	53
(q)	<i>ESMA speech on the state of play in financial reporting</i>	53
(r)	<i>Central Bank publishes notice of intention on recognition of sustainability knowledge and competence in the minimum competency code 2017 (the "MCC")</i>	53
(s)	<i>TRV Risk Analysis: ESG names and claims in the EU fund industry</i>	53
(t)	<i>TRV Risk Analysis: European sustainable debt market – ESG pricing effect</i>	54
(u)	<i>IOSCO final report on supervisory practices to address greenwashing</i>	54
(v)	<i>IOSCO consultation report on voluntary carbon markets ("VCMs")</i>	54
(w)	<i>Common supervisory action on MiFID II sustainability requirements (This is a further update to section 3.5(c) of the quarterly report covering the third quarter of 2023)</i>	55
(x)	<i>Draft guidelines on enforcement of sustainability information</i>	55
(y)	<i>ESMA public statement on the European common enforcement priorities for 2023 annual financial reports</i>	56

(z)	<i>ESMA report on disclosures of climate-related matters in financial statements</i>	56
(aa)	<i>ESMA results of a fact-finding exercise on corporate reporting practices under the Taxonomy</i>	57
(bb)	<i>Opening remarks by Commissioner McGuinness at the European Parliament plenary debate on the European green bond standard (This is a further update to section 4.14(f) of the quarterly report covering the first quarter of 2023)</i>	57
(cc)	<i>Platform and the Commission launch the Taxonomy stakeholder request mechanism</i>	58
(dd)	<i>Decision to delay sector-specific European Sustainability Reporting Standards ("ESRS") (This is a further update to section 3.12(f) of the quarterly report covering the third quarter of 2023)</i>	58
(ee)	<i>Amendment to accounting directive to adjust corporate thresholds for inflation published in OJ (This is a further update to section 3.12(c) of the quarterly report covering the third quarter of 2023)</i>	58
(ff)	<i>First set of ESRS published in the OJ</i>	59
(gg)	<i>Financial Stability Board ("FSB") report on climate disclosures</i>	59

Quarter Highlights

In this quarter's edition of the Walkers legal and regulatory report, we identify a number of key highlights as follows:

As firms finalised their preparations for the implementation of the Individual Accountability Framework the **Central Bank** published its feedback statement and finalised rules (as outlined at **section 3.2** of the report).

The **Central Bank** has also during the period issued a number of additional publications of significance:

- its industry letter following ESMA's CSA with its findings on **asset valuation (section 3.6)**;
- new **Q&As** on topics including **PRIIPs KID** filing requirements, QIAIFs investing via subsidiaries and the accounting treatment of investment limited partnerships ("ILPs") (see **sections 1.2 1.3 and 2.1**);
- its consultation paper on a new European Long-Term Investment Funds ("**ELTIF**") chapter in the AIF Rulebook which will enable the authorisation of ELTIFs under domestic funds legislation (**section 3.1**);
- its feedback statement and final rules on the additional **capital requirements** for fund management companies authorised to provide individual portfolio management services (**section 3.4**);
- a public statement on its recent **enforcement action** reprimanding and penalising for the first time an ICAV concerning a breach of its EMIR reporting obligations (**section 3.5**); and
- its consultation papers on macroprudential measure for GBP-liability driven investment funds (**section 3.14**) and its approach to innovative engagement in financial services (**section 3.15**).

The final compromise text of the political agreement of **AIFMD II** has been published ahead of its anticipated formal adoption in Q1 2024 (as outlined in **section 1.1** of the report). The changes agreed as part of the AIFMD II review amongst other things, target the harmonisation of the rules for funds which undertake lending activity. The Central Bank has confirmed in a recent speech, that in due course, it will move to bring the provisions of the domestic **loan origination** framework in line with the provisions in AIFMD II (**section 3.18(a)**).

The Minister for Finance has published a progress update on the review underway of the funds sector in Ireland (**section 4.3(a)**).

Ahead of **ELTIF 2.0** coming into effect ESMA published its final report on regulatory technical standards under the ELTIF Regulation (**section 4.4(a)**).

The ESAs have published an important Q&A clarifying whom should be identified as the **PRIIPs KID** manufacturer for investment funds (**section 4.4(f)**).

As financial services providers continue preparatory work towards the implementation of the directive on digital operational resilience for the financial sector ("**DORA**"), the ESAs have published their second set of technical standards and guidelines (**section 4.4(g)**).

Ahead of the implementation in April 2024 of revised guidelines and technical standards in relation to the **EMIR Refit** Regulation, **ESMA** has published the official versions of the EMIR reporting guidelines (**section 4.4(d)**).

The **UK Financial Conduct Authority** has launched its consultation on proposed rules to allow overseas funds to be recognised the overseas fund regime while individual equivalence determinations are still awaited (**section 4.9(a)**).

The **European Commission** (the "**Commission**") has adopted delegated legislation on updates to cross-border notifications under AIFMD and UCITS Directive (**sections 1.6 & 2.4**).

Finally, on **sustainability matters**, we highlight a number of key developments during the period:

- The ESAs have put forward their amendments to improve sustainability disclosures under **SFDR Level 2 (section 4.11(a))**. The amendments if adopted would see the introduction of new social indicators and a streamlining of the framework for the disclosure of principal adverse impacts of investment decisions on the environment and society.
- ESMA has provided an update on next steps on implementing for its long-delayed **guidelines** on ESG and sustainability-related terms in **fund names**, including communicating a number of key changes to the original guidelines (**section 4.11(b)**).
- The **Commission's** consultation paper (**section 4.11(c)**) on the implementation of the SFDR which consults on two potential **product categorisation** systems due to persistent concerns that the current market use of SFDR as a labelling scheme leads to risks of greenwashing has closed during the period. The consultation has yielded a number of important responses which will contribute to the Commission's deliberations on the future implementation of SFDR.
- Finally, **the FCA** has published its final sustainability disclosure requirements ("**SDR**") and investment labels (**section 4.11(m)**). While the SDR is deemed compatible with SFDR the FCA has not applied the SDR (for the moment at least) to overseas funds marketing in the UK.

1. AIFMD Developments

1.1 Agreement on final political text of AIFMD II (*This is a further update to section 1.1 of the quarterly report covering the third quarter of 2023*)

On 10 November, the Council of the EU published the [final compromise text](#) of the political agreement on a proposed directive amending the Alternative Investment Fund Managers Directive (2011/61/EU) ("AIFMD") and the UCITS Directive (2009/65/EC) relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds (referred to as "AIFMD II") and the [accompanying note](#) with a view to formal adoption of the text of the legislative proposal by the Council and Parliament.

Walkers' asset management and investment funds team have published an [advisory](#) entitled 'AIFMD II - A Closer Look' which assesses the key changes which will impact full-scope EU alternative investment fund managers ("AIFMs") and the next steps in the implementation of AIFMD II.

1.2 AIFMD Q&A updated (48th edition)

On 1 November 2023, the Central Bank published the [48th Edition](#) of its AIFMD Q&A.

This new edition features the publication of:

- A new Q&A (ID **1156**) which sets out the circumstances in which the Central Bank may permit an ILP whose sole business is the investment of its funds in property with the aim of spreading investment risk and giving its partners the benefit of the management of its assets, to avail of an exemption, pursuant to section 15(1) of the Investment Limited Partnerships Act 1994, from the provisions of European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 (S.I. 597 of 2019). The Q&A notes that the general partner of an existing ILP may apply to the Central Bank to avail of the exemption.
- A revised Q&A (ID **1084**) which extends the exemption from the L-QIAIF regime (which is currently available to QIAIFs who grant loans to wholly-owned subsidiaries) to include QIAIFs who grant loans to co-investment vehicles in which the QIAIF has a majority interest and provided such lending is ancillary to the QIAIF's predominant investment strategy.

Our asset management and investment funds team have published an [advisory](#) on the significant updates to the AIFMD Q&A and on the consultation on the implementation of the Irish ELTIF offering (*as outlined in section 3.1 of this report*).

1.3 AIFMD Q&A updated (49th edition)

On 27 November 2023, the Central Bank published the [49th Edition](#) of its AIFMD Q&A which contains updates related to the PRIIPs key information document ("KID") and the publication of three new Q&As which consider what is permissible when a RIAIF or QIAIF invests through a subsidiary.

The revisions to existing Q&A ID 1126 clarify that where an AIF is required to produce a PRIIPs KID, this should be filed through the Central Bank's Portal in accordance with the Central Bank's [guidance](#) on the filing of a PRIIPs KID. The Central Bank's guidance has been updated to specify that authorised AIFs that are required to produce a PRIIPs KID can submit their KID through the Portal under the section "Investment Funds- Ad Hoc returns" from 1 January 2024.

The AIFMD Q&A also features the publication of three new Q&As (IDs **1157, 1158 and 1159**) which consider what is permissible when a RIAIF/QIAIF invests through a subsidiary.

Q&A **1157** concerns the 'establishment test' and states that, where a QIAIF/RIAIF intends to invest through a wholly owned company or a subsidiary and the wholly owned company or subsidiary was established, with the intention of the QIAIF/RIAIF using it for investment purposes, prior to the establishment of the QIAIF/RIAIF, the Central Bank considers the wholly owned company or subsidiary as being established by the QIAIF/RIAIF, including in circumstances where the wholly owned company or subsidiary existed prior to the establishment of the QIAIF/ RIAIF.

Q&A **1158** states that, where a QIAIF/RIAIF intends to invest through a wholly owned company or subsidiary and the wholly owned company or subsidiary has been established with the intention of the QIAIF/RIAIF using it for investment purposes, the wholly owned company or subsidiary can establish or participate in the establishment of a further vehicle that is also used for investment purposes. This is permitted subject to compliance with the Central Bank's requirements in relation to subsidiaries (as set out in the AIF Rulebook) and the requirements of the Q&As on subsidiaries.

Q&A **1159** states that where a QIAIF/RIAIF intends to invest through a co-investment vehicle that includes other third party investors and is not a wholly owned subsidiary of the QIAIF/RIAIF, the Central Bank requires that the ownership/control of the co-investment vehicle must reflect the actual economic interest that the QIAIF/RIAIF has in that vehicle and the QIAIF/RIAIF must demonstrate that such arrangements reflect the true economic interests of the parties holding shares in that vehicle. The reasons for use of a co-investment vehicle, rather than a wholly owned subsidiary, must be documented by the board of the AIFM and approved by the depositary in writing and be available to the Central Bank on request. The arrangement should not be structured in such a way as to circumvent the policy objectives of the Q&A.

1.4 European Union (Alternative Investment Fund Managers) (Amendment) Regulations (S.I. No. 2023/629)

On 15 December 2023, the European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2023 ([S.I. No. 630/2023](#)) was published in Iris Oifigiuil with the purpose of ensuring alignment with EU requirements.

This S.I. revokes paragraph (7A) of Regulation 22 of the AIFM Regulations 2013 (concerning the effect of an event of insolvency on assets held in custody by depositaries and third parties).

1.5 AIF Rulebook (updated November 2023) (*This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022*)

On 27 November 2023, the Central Bank issued its revised AIF [Rulebook](#) setting out in Part B of Chapter 3, (AIFM Requirements), rules on the additional capital requirements for AIFMs authorised to provide individual portfolio management services.

The Central Bank also updated its Minimum Capital Requirements ("MCR") Reporting [Template for AIFMs](#). The updated MCR template reflects the amendment pursuant to Regulation 10(5) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (the "**Irish AIFM Regulations**"), such that the own funds of an AIFM can never be less than the amount prescribed in Article 11 of Regulation (EU) No. 2019/2033 on the prudential requirements of investment firms (the "**IFR**"), the fixed overhead requirement.

The Central Bank has also updated its [table](#) summarising the reporting requirements for AIFMs. Please note that reporting obligations may vary on a firm-by-firm basis.

The new requirements will not apply to AIFMs authorised to provide individual portfolio management services on or before 27 November 2023 until 27 May 2024. For the avoidance of doubt, the current condition of authorisation continues to apply to all AIFMs authorised to provide individual portfolio management services authorised on or before 27 November 2023 pending the application of the new own funds requirements. AIFMs which obtain authorisation to provide individual portfolio management services after 27 November 2023 will be subject to these new requirements upon authorisation.

The Central Bank's feedback statement to CP152 is outlined at section 3.3 of the report.

1.6 Commission adopts delegated legislation on cross-border notifications under AIFMD (*This is a further update to section 4.6(j) of the quarterly report covering the fourth quarter of 2022*)

On 15 December 2023, the Commission adopted the following delegated legislation on cross-border notifications under AIFMD and UCITS Directive:

- [Delegated Regulation](#) supplementing the AIFMD with regard to regulatory technical standards (RTS) specifying the information to be notified in relation to the cross-border activities of AIFMs. The Delegated Regulation sets out the information that should be communicated by managers to competent authorities under Article 33 of the AIFMD.
- [Implementing Regulation](#) laying down implementing technical standards (ITS) for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters. The revised template notifications are set out in Annexes I, II, III, IV and V to the Implementing Regulation.

The Council of the EU and the European Parliament will now scrutinise the draft legislation. If neither object, they will enter into force 20 days after publication in the OJ and apply 3 months later.

2. UCITS Developments

2.1 UCITS Q&A updated (40th edition)

On 27 November 2023, the Central Bank released its [40th Edition](#) which revises **ID 1109** to clarify that from 1 January 2024, UCITS authorised prior to 1 January 2023 that are required to provide a PRIIPs KID should submit the PRIIPs KID to the Central Bank through the Portal in accordance with the revised [guidance](#) on PRIIPs KID filing requirements on the Central Bank's website.

The Central Bank's guidance has been updated to specify that UCITS authorised prior to 1 January 2023 that are required to produce a PRIIPs KID can make their initial submission of the KID through the Central Bank's Portal (as an ad hoc return) under the section "Investment Funds – Ad Hoc returns" from 1 January 2024.

2.2 European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 (S.I. No. 629/2023)

On 15 December 2023, European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 ([S.I. No. 629/2023](#)) was published in Iris Oifigiúil, with the purpose of ensuring alignment with EU requirements.

2.3 Central Bank UCITS Regulations (S.I. No. 565 of 2023) *(This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022 and section 1.5 of this report)*

On 27 November 2023, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 ([S.I. No. 565 of 2023](#)) (the "**Regulations**") was published by the Central Bank. The Regulations were subsequently [published](#) in Iris Oifigiúil and came into operation on 28 November 2023 for UCITS management companies authorised to provide individual portfolio management services.

The Regulations contain transitional measures postponing application of the Regulation until 27 May 2024 for existing UCITS management companies which were authorised to provide individual portfolio management services on or before 27 November 2023. The Regulations prescribes additional capital requirements and an internal capital adequacy assessment by UCITS management companies authorised to provide individual portfolio management services.

The Central Bank also updated its MCR [Reporting Template](#) for UCITS management companies. The updated MCR reflects the amendment of Article 17(6) of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 such that the own funds of a UCITS management company can never be less than the amount prescribed in Article 11 of IFR, the fixed overhead requirement.

The updated MCR will not apply to UCITS Management Companies or AIFMs authorised on or before 27 November 2023 until 27 May 2024 but will apply on authorisation to UCITS Management Companies or AIFMs authorised from 27 November 2023.

The Central Bank has also updated its [table](#) summarising the reporting requirements for UCITS management companies. Please note that reporting obligations may vary on a firm-by-firm basis.

The feedback statement to CP154 is detailed at section 3.4 of the report.

2.4 Commission adopts delegated legislation on cross-border notifications under the UCITS Directive *(This is a further update to section 4.6(j) of the quarterly report covering the fourth quarter of 2022)*

On 15 December 2023, the Commission adopted the following delegated legislation on cross-border notifications under the UCITS Directive:

- [Delegated Regulation](#) supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS. The Delegated Regulation sets out the information that should be communicated by managers to competent authorities under Articles 17, 18 and 20 of the UCITS Directive.
- [Implementing Regulation](#) laying down ITS for the application of the UCITS Directive with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Regulation 584/2010. The revised template notifications are set out in Annexes I, II, III, IV and V to the Implementing Regulation.

The Council of the EU and the European Parliament will now scrutinise the draft legislation. If neither object, they will enter into force 20 days after publication in the OJ and apply 3 months later.

3. Central Bank Updates

3.1 Consultation paper on ELTIF chapter of the AIF Rulebook *(This is a further update to section 2.2 of the quarterly report covering the third quarter of 2023 and section 4.4(a) of this report)*

The Central Bank has published [Consultation Paper 155](#) on a new ELTIF chapter in the Central Bank's AIF Rulebook to support the establishment of ELTIFs in Ireland. The proposed chapter will set out the specific operational and disclosure requirements that will be applied to ELTIFs as a condition of authorisation. The proposed ELTIF chapter contained in CP155 contains six sections related to:

- ELTIF restrictions;
- supervisory requirements;
- prospectus requirements;
- general operational requirements;
- annual and half-yearly reports; and
- requirements for the marketing of ELTIFs to retail investors in Ireland.

The Central Bank sought the views of stakeholders on the proposed chapter. Responses to the consultation were due by 13 December 2023.

3.2 Central Bank finalises Individual Accountability Framework ("IAF") Standards and Guidance *(This is a further update to section 3.6 of the quarterly report covering the first quarter of 2023)*

On 16 November 2023, the Central Bank published a [press release](#) detailing the publication of its CP153 [Feedback Statement](#), and issued its final [Regulations](#) (on the Senior Executive Accountability Regime ("SEAR"), the Certification Regulations and the Holding Companies Regulations) as well as its finalised [Guidance](#) to firms on the application of the [Individual Accountability Framework](#).

The Central Bank confirmed that the conduct standards and enhancements to the fitness and probity ("F&P") regime are set out in legislation and are applicable from 29 December 2023. The SEAR Regulations describing responsibilities of specific roles and requirements of firms apply to in-scope firms from 1 July 2024 and to (independent) non-executive directors ("INEDs") at in-scope firms from 1 July 2025. This deferral is intended to allow industry a transition period to meet their obligations.

Regulated financial service providers need to have an additional certification process as regards compliance with standards of F&P, for each of their controlled functions ("CFs") and pre-approval controlled functions ("PCFs"). The first annual Central Bank submission of confirmation of the completion of the certification process for each PCF role holder and of confirmation of the completion of the overall certification process for all CFs, will relate to the 2024 calendar year and will be required in 2025.

A number of other key changes are reflected in the final provisions including:

- amendments have been made throughout the Regulations and Guidance on the IAF to address technical comments received and for the purpose of providing additional clarity to firms;
- re-iterating that the Central Bank's approach to the implementation of the IAF is based on the principles of proportionality, predictability and reasonable expectations;
- limiting the extent of mandatory periodic reporting under the framework to the Central Bank, instead requiring that firms take responsibility for relevant documentation and make it available

to the Central Bank on request. Further, in line with feedback received, amendments have been made to minimise administrative burden;

- removal of the additional obligation for a firm to report to the Central Bank where formal disciplinary action has been concluded against an individual in respect of a breach of the Conduct Standards;
- other parts of the IAF (aside from the introduction of SEAR) including the Common Conduct Standards and Additional Conduct Standards will apply to (I)NEDs as to other CFs and PCFs respectively from 29 December 2023; and
- on the annual certification of compliance with the standards of F&P regime and in order to align with approach adopted under the F&P regime, amendments have been made to the Guidance to limit the scope of the enhanced due diligence aspect of the certification requirement to PCFs, CF1s and CF2s and to facilitate self-certification in respect of CF3 – CF11.

On 21 December 2023, the Central Bank published its [communication](#) on 'Amendments to the List of Pre-approval Controlled Functions (PCFs)' issued pursuant to the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 ([S.I. No. 663 / 2023](#)). The S.I. was published in Iris Oifigúil on 22 December 2023.

In late December 2023, the Central Bank issued a number of publications on the F&P section of the Central Bank's website:

- Updated [F&P Guidance](#);
- Updated [F&P Standards](#) (Code issued under Section 50 of the Central Bank Reform Act 2010); and
- Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 ([S.I. No 663 of 2023](#)) which amend the [list of pre-approval controlled functions](#) and the [list of controlled functions](#).

The updated F&P Guidance includes a new Part C relating to CFs, the related certification processes and underlying due diligence requirements

Our asset management and investment funds team have published an [advisory](#) outlining the Central Bank's expectations on the implementation of the IAF (commencing from 29 December 2023).

Walkers' regulatory and compliance team have published an [advisory](#) entitled 'Reasonable steps and other IAF topics populating the boardroom agenda' which analyses the key topics that have arisen for boards developing their frameworks to meet the requirements of the IAF and how some of these have been impacted by the Central Bank's IAF Feedback Statement.

3.3 CP154 Feedback Statement and Administrative Sanctions Guidelines (*This is a further update to section 3.4 of the quarterly report covering the second quarter of 2023*)

On 13 December, the Central Bank has [published](#) its CP154 [Feedback Statement](#) and consolidated [Guidelines](#) relating to the enhanced [Administrative Sanctions Procedure](#) ("ASP").

While much of the ASP remains the same, the Central Bank (Individual Accountability Framework) Act 2023 changed the ASP in several ways. In some circumstances, the Central Bank can now take direct enforcement actions against individuals, and where a settlement is agreed and is based on admissions, a High Court order is required to confirm the sanctions imposed. Other practical

changes include allowing for earlier disclosure of documents to subjects of investigations; and the Central Bank has now published the methodologies for determining monetary penalties.

The guidelines describe the following stages of an ASP:

- Investigation;
- Inquiry;
- Settlement;
- Sanction; and
- Confirmation by High Court and appeal.

The ASP Guidelines have revised and consolidated the following Central Bank ASP guidance documents on:

- [Outline of Administrative Sanctions Procedure 2018](#);
- [Inquiry Guidelines 2014](#); and
- [ASP Sanctions Guidance](#).

The enhanced ASP Guidelines entered into force on 13 December 2023.

3.4 Central Bank feedback statement to CP152 *(This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2022)*

On 27 November 2023, the Central Bank published the CP152 [feedback statement](#) related to the regulatory capital (own funds) requirements for UCITS management companies and AIFMs authorised for discretionary portfolio management.

The final rules reflect a minor amendment as against the proposed rules contained in the consultation paper which is to the coefficient for the calculation of K-COH (client orders handled) for cash trades (amended to 0.1%).

The requirements are included in:

- Part B of Chapter 3, AIFM Requirements, in the AIF Rulebook (as outlined in section 1.4 of this report); and
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 (S.I. No. 565 of 2023) (as outlined in section 2.3 of this report).

A copy of the revised MCR templates, MCR guidance notes and the ICAAP questionnaire are available on the respective sections of the Central Bank website ([UCITS management company reporting & AIFM reporting](#)).

The Central Bank does not propose to develop additional bespoke guidance for UCITS management companies and AIFMs and impacted firms' attention is instead directed to [relevant materials](#) produced by the European Banking Authority ("EBA") and to relevant [EBA Q&As](#).

In-scope fund management companies ("FMCs") which obtain authorisation from 28 November 2023 will be subject to these new requirements upon authorisation. The new requirements will not apply to FMCs authorised on or before 27 November 2023 until 27 May 2024.

Please also refer to our previous [advisory](#) on the detail contained in CP152.

3.5 Enforcement action concerning breach of EMIR reporting

On 30 November 2023, the Central Bank published a [press release](#) and public [statement](#) relating to an enforcement action against an Irish ICAV which has been reprimanded and fined €192,500 by the Central Bank for breach of its reporting obligations under Article 9(1) of EMIR Regulation (EU/648/2012) ("EMIR"). The failure in reporting related to trading carried out between January 2018 and May 2020. This is the first monetary penalty imposed on an investment fund by the Central Bank and is the Central Bank's first enforcement case under the European Union (European Market Infrastructure) Regulation 2014, as amended (the "EMIR Regulations") to date.

The case highlights to the Central Bank the importance of timely and accurate data reporting. In its [press release](#), the Central Bank highlights that the Central Bank "have reiterated the importance of Data Quality and of EMIR reporting to industry over a number of years and in each Securities Markets Risk Outlook Report published since 2021. The gap in data reporting which gave rise to this investigation only became apparent to the ICAV upon a review of its EMIR reporting arrangements, prompted by the Central Bank's letter to industry in 2019 on this theme".

Our [advisory](#) looks at the details of the breach and key takeaways for financial services clients.

3.6 Industry letter on asset valuation (*This is a further update to section 3.6(e) of the quarterly report covering the second quarter of 2023*)

On 14 December 2023, the Central Bank has [published](#) its industry letter on asset valuation, following ESMA's final [report](#) on its 2022 common supervisory action ("CSA") on valuation, which was published on 24 May 2023.

Irish FMCs should consider the contents of this letter in conjunction with ESMA's report. The industry letter outlines that the majority of the FMCs in the sample were able to demonstrate adherence to the relevant legislation and supervisory expectations as outlined in the scope and assessment framework of the CSA. However, a significant minority of FMCs could not evidence compliance with the expectations of the Central Bank and the legislative requirements. Accordingly, risk mitigation programmes ('RMPs') were issued to a number of these FMCs.

The industry letter outlines in further detail a number of key findings, observations and actions which should be considered by FMCs in conjunction with ESMA's report, in the following areas:

Findings

- 1) Use of group asset valuation policies and procedures;
- 2) Lack of formal asset valuation error procedures;
- 3) Poor quality of asset valuation policies and procedures; and
- 4) Limited evidence of periodic reviews

Observations

- 1) Liquidity stress testing; and
- 2) Independence of the asset valuation function at FMC.

Actions required

- **Policies and procedures:** FMCs should have documented, comprehensive and entity specific asset valuation policies and procedures which clearly outline the operational roles and responsibilities for all parties involved in the asset valuation process.

- **Regular Review:** Asset valuation policies and procedures should be subject to review by senior management at least annually or where required throughout the year to ensure they remain fit for purpose.
- **Errors Procedures:** All FMCs should have a formalised and comprehensive errors procedure in place to ensure remedial action is implemented when valuation errors or incorrect calculations of the NAV occur. These procedures should also be reviewed at least annually and updated where required.

The contents of the industry letter should be brought to the attention of the board of directors of FMCs for consideration and appropriate actions should be taken without delay. FMCs are required to conduct a review of their asset valuation frameworks to ensure they continue to be fit for purpose and adhere to all relevant legislative requirements including the expectations above. This review should be completed by the end of Q2 2024.

Our recent [advisory](#) examines the findings of the industry letter in further detail.

3.7 Market-based finance monitor 2023

On 5 December 2023, the Central Bank published the second edition of its [Market Based Finance Monitor](#) (2023) (the "**Monitor**").

The aim of this publication is to track trends and the evolution of vulnerabilities in the sector in a systematic way. 'Market Based Finance' refers to the raising of debt or equity through financial markets, rather than through the banking system. The first edition of the Monitor was published in December 2021.

The primary change in this edition of the Monitor is the introduction of new list of financial stability cohorts within the investment fund sector (Bond, Equity, Hedge, Irish Property, GBP LDI, Other and Money Market Funds).

The second change is the introduction of new monitoring tools for the investment funds sector. These include the Risk Heatmaps (Box A) to measure evolving and relative vulnerabilities and the network analysis tool (Box B) to assess interconnectedness by measuring common asset holdings between fund cohorts. Consistent with its recent macro-prudential discussion paper, the Central Bank identifies that the key vulnerabilities to financial stability risks are leverage, liquidity mismatch, and the interconnectedness of the fund cohorts (in particular, indirect interconnectedness via bond portfolio overlap).

- Section 2 of the Monitor provides a short overview of the MBF sector in Ireland.
- Section 3 focuses on the investment fund sector and in particular on trends in leverage, liquidity mismatch and asset holdings of debt instruments (by maturity and ratings) by fund sector cohort.
- Section 4 looks at recent trends and evolving vulnerabilities in money market funds ("**MMFs**").
- Section 5 highlights some of the characteristics of the special purpose entity sector.

3.8 Systemic risk analysis

On 26 October 2023, the Central Bank [published](#) its systemic risk pack ("**SRP**") to examine the build-up of risks to the Irish financial system and its participants.

The purpose of the SRP is to facilitate macroprudential analysis and to focus policy maker discussion on the systemic risk environment. The SRP is a core part of the Central Bank's assessment of the current risk landscape, the outcome of which informs the preparation and drafting of the Central Bank [Financial Stability Review](#).

The contents of the SRP are as follows:

- SRP heatmaps with indicators are grouped around four categories of risk:
 - (a) cyclical;
 - (b) structural;
 - (c) real-estate; and
 - (d) non-banks.
- detail on the background to the SRP, and
- a glossary of the indicators included in the heatmaps.

The SRP heatmaps includes the following data of interest to the Irish fund industry on:

Irish commercial real estate ("CRE") funds leverage and liquidity

The liquidity indicator assesses the liquidity buffers of Irish resident funds, which fulfil typical redemption flows without the need to sell real-estate assets. A liquidity buffer is defined as (liquid assets/total assets). The majority of Irish CRE funds give investors at most one opportunity per year to redeem their investments. Most Irish funds can also limit large redemption requests with "gates" (temporary periods when funds do not allow redemptions) and redemption fees. This reduces the risk that CRE funds may have to sell properties quickly at discounts to meet redemptions.

Irish funds holding of Irish bank debt

The data refers to the share of total Irish bank debt held by Irish resident funds. An increase in this figure is indicative of a rise in concentration risk and a greater level of interconnectedness between resident non-bank financial intermediaries and the Irish banking sector.

Irish funds holding of Irish government debt

The data refers to the share of total Irish government debt held by Irish resident funds. An increase in this figure is indicative of a rise in concentration risk and a greater level of interconnectedness between resident non-bank financial intermediaries and the Irish sovereign.

Irish funds holding of Irish non-financial corporation ("NFC") debt

The data refers to the share of total Irish NFC debt held by Irish resident funds. An increase in this figure is indicative of a rise in concentration risk and a greater level of interconnectedness between resident nonbank financial intermediaries and the Irish corporate sector.

The content reflects data available on or before 8 September 2023.

3.9 Financial Stability Review 2/2023 (*This is a further update to section 3.1 of the quarterly report covering the second quarter of 2023*)

On 23 November 2023, the Central Bank published its second [Financial Stability Review of 2023](#) ("FSR"). The Central Bank [press release notes that the](#) FSR outlines the key risks facing the financial system, the Central Bank's assessment of the resilience of the economy and financial system to adverse shocks and the Central Bank's policy actions to safeguard financial stability.

The FSR contains sections of interest to property funds relating to:

(a) *Resilience of Irish property funds and non-bank lenders*

The report notes Irish property funds' holdings in the Irish CRE market increased in 2022 despite falling CRE market prices. Leverage remains a key vulnerability in the property fund sector. Aggregate leverage in the property fund sector as a whole remains unchanged year on year at 46% in Q4 2022. The proportion of assets held by highly leveraged funds (leveraged above 60%) was stable at 32% in Q4 2022.

(b) *Macroprudential policy for non-banks*

The report reiterates that in line with the Central Bank's approach to macroprudential policy, the phased implementation of the property fund measures announced last year is being closely monitored. A new annual data collection has been introduced to assist with the ongoing phased implementation of the measures. Relevant property funds are expected to submit plans to the Central Bank on how they intend to reduce or maintain leverage below the 60% limit. The Central Bank is actively engaging with those funds. The Central Bank does not intend to recalibrate the leverage limit regularly.

In addition to its macroprudential work on property funds and Liability Driven Investment ("LDI") funds, the Central Bank continues to work with international partners to develop and operationalise the broader macroprudential framework for the funds sector.

The Central Bank are considering feedback received to the [Discussion Paper](#) on an approach to macroprudential policy for the sector and a feedback statement will be published next year.

3.10 Funding Strategy and Guide to the 2023 Industry Funding Regulations

On 2 October 2023, the Central Bank published its [Funding Strategy and Guide to the 2023 Industry Funding Regulations](#).

The quantum of the fund levies remains the same as for 2022 whereby all investment funds authorised by the Central Bank will be liable to pay a minimum levy of €7,165. Umbrella funds will also pay a contribution per sub-fund of €475 up to a maximum of twenty sub-funds, resulting in a potential maximum contribution for umbrella funds of €16,665.

All investment fund service providers, which have been authorised by the Central Bank are liable to pay the levy contribution corresponding to their respective PRISM impact categorisation (high, medium high, medium low and low). Levies for investment fund service providers falling within sub-categories E2a, E2b, E2c and E2d have decreased from last year's levels.

The Central Bank intends to move to issuing levy notices by email in 2024 and to facilitate this change will require email details for invoicing purposes. It will contact regulated entities with further specific details through the portal messaging system in late 2023.

3.11 Beneficial ownership guidance updated (*This is a further update to section 4.1 of the quarterly report covering the second quarter of 2023 and section 2.14 of the quarterly report covering the third quarter of 2023*)

On 20 October 2023, the Central Bank [updated](#) its Guidance on the Beneficial Ownership Register of Certain Financial Vehicles (the "**Register**").

The guidance has been updated to reflect:

- miscellaneous updates to the legislative framework;
- access to the Register by member of the public (chapters 3 & 4);
- details of the dedicated levy applicable to certain financial vehicles (chapter 6); and
- references to the Central Bank's portal, replacing online reporting system ("**ONR**") references.

3.12 Central Bank markets updates

(a) *Issue 10 of 2023*

On 27 November 2023, the Central Bank published the following important updates via its latest [Markets Update](#) (issue 10).

- [Central Bank publishes 40th Edition of the UCITS Q&A](#)
- [Central Bank published 49th Edition of the AIFMD Q&A](#)
- [Central Bank publishes Feedback Statement to Consultation Paper CP152 – Own Funds requirements for UCITS Management Companies and AIFMs authorised for discretionary portfolio management services](#)
- [Updated Central Bank UCITS Regulations published](#)
- [Central Bank publishes updated AIF Rulebook setting out additional capital requirements for AIFMs authorised to provide individual portfolio management services](#)
- [Central Bank publishes updated Minimum Capital Requirements Reporting Template for AIFMs and UCITS Management Companies](#)

The updates of relevance in this issue are covered elsewhere in this report.

(a) *Issue 9 of 2023*

On 1 November 2023, the Central Bank published the following important updates via its latest [Markets Update](#) (issue 9).

- [Central Bank publishes Consultation on ELTIF chapter in the AIF Rulebook](#)
- [Central Bank published 48th Edition of the AIFMD Q&A](#)

The updates of relevance in this issue are covered elsewhere in this report and in our previous reports.

(b) *Issue 8 of 2023*

On 4 October 2023, the Central Bank published its [Markets update](#) (issue 8).

The main items of relevance to funds and fund service providers contained in the update have been summarised in our previous reports.

3.13 Notice of year-end submission deadlines

On 7 November 2023, the Central Bank advised industry of the deadlines for receipt of complete applications for authorisations and approvals over the Christmas period.

3.14 Consultation paper CP157 on macroprudential measures for GBP LDI funds *(This is a further update to section 2.8 of the quarterly report covering the third quarter of 2023)*

On 23 November 2023, alongside the publication of the FSR the Central Bank launched a [public consultation \(CP157\)](#) on the proposed codification of the existing yield buffer for Irish authorised sterling denominated LDI funds.

CP157 outlines the regulatory response to the UK gilt market crisis in 2022 and the Central Bank's proposed codification of the yield buffer of minimum 300 bps (building on its [November 2022 letter](#)) accompanied by proposed liquidity guidance. The yield buffer will limit each in scope fund's leverage based on the duration of their portfolio and will be codified as an "other restriction" under Article 25 of AIFMD.

The proposed measures would be imposed by way of condition of authorisation under Regulation 9 of the Irish AIFM Regulations. Where a non-Irish AIFM is managing an Irish authorised GBP denominated LDI fund, the condition will be imposed under the relevant domestic funds legislation if the non-Irish AIFM is not already subject to the yield buffer requirement under Article 25 in their home member state. An implementation period of 3 months is proposed following the finalisation of the codification process, which is largely a codification of existing measures.

On CP157, [remarks](#) delivered by the Central Bank's Governor highlight that in order to ensure international coordination in codifying these measures, the CSSF in Luxembourg is also publishing a similar consultation paper on LDI funds. Given the international nature of these funds, such coordination is important to ensure the effectiveness of these measures.

The consultation will close on 18 January 2024.

3.15 Consultation paper CP156 on its approach to innovation engagement in financial services

On 8 November 2023, the Central Bank launched its [consultation paper](#) CP156 on its new approach to innovation engagement in financial services.

The consultation plans enhancements to the existing Innovation Hub to drive more informed engagement with industry and also includes a proposal to establish an Innovation Sandbox Programme (the "**Sandbox**") delivered in conjunction with a third party innovation programme that would allow innovative firms engage with the regulatory framework and develop innovations in a clear and transparent way that promote better outcomes for society and the financial system. The programme will involve informing the early stage development of selected innovative initiatives and is intended to provide innovators, both incumbents and new entrants, with access to regulatory advice and support. The Sandbox will be open to a wide range of applications from all sectors of the financial system.

The Sandbox will take a thematic approach in engaging with innovation. By tailoring to specific (evolving) themes that have potential for positive outcomes in financial services, this approach would allow a focus on addressing the unique challenges/issues of that theme. This Sandbox will provide a robust programme over a specified period where the innovation can develop allowing the Central

Bank to observe how the innovation would interact with the current regulatory and supervisory frameworks, to address any unintended barriers within the framework (where possible).

Operating Model

The Sandbox will consist of a multi-staged approach as detailed in the CP156. Relevant Central Bank experts will provide regulatory advice and support through a series of workshops, guidance mentorship, and educational components to financial intermediaries, start-ups, and research projects aimed at accelerating the development of projects and at promoting the quality and safety of specific innovations. This will involve close engagement with the innovators through ad hoc teams of Central Bank experts who meet with the innovators regularly to discuss the developments, progress or results. These teams will provide expert knowledge of regulation required, identify any arising regulatory gaps and areas of potential risk for the innovation development. They will also provide advice and support on the regulatory approach if required and this approach will help firms understand the potential regulatory implications of their innovative product or business model.

The Sandbox, as it proposed, will not provide any derogation or waivers from regulation but the Central Bank will seek to apply the applicable regulatory frameworks proportionally with an outcome focused, risk-based approach.

The consultation period will remain open for responses to 8 February 2024 and the Sandbox is intended to be operational in 2024.

3.16 Industry communication on conduct risk assessment on telephone and electronic communications

On 1 October 2023, the Central Bank wholesale market conduct function [published](#) an industry communication following a [conduct risk assessment](#) of telephone and electronic communications in investment firms and credit institutions pursuant to MiFID II Directive (2014/65/EU) ("**MI FID II**").

Following on from its Risk Outlook Report 2023, which highlighted the risk of operating in a hybrid-working environment, a conduct risk assessment of telephone and electronic communications was conducted by the Central Bank. This industry communication highlights the Central Bank's findings and areas for improvement.

Under Article 16(7) of MiFID II, firms must ensure that all communications relating to client orders are recorded and that employees do not use personal devices to communicate with clients regarding orders.

The Central Bank's findings included that investment firms and credit institutions involved in securities markets activity have failed to adequately monitor how staff communicate while working from home. Additionally none of the firms included had made amendments to recording of telephone and electronic policies or procedures despite moving from a largely in-office environment during and after COVID-19 lockdowns.

3.17 Dear CEO letter on MiFID II costs and charges disclosure requirements

On 1 December 2023, the Central Bank issued a [Dear CEO letter](#) following its thematic review which examined MiFID investment firms and credit institutions application of the costs and charges disclosure requirements in the context of the provision of MiFID II services to retail clients. The thematic review followed ESMA's [statement](#) on its CSA in 2022.

Schedule 1 to the letter outlines the key findings and expectations in respect of the CSA on costs and charges, together with good practices observed.

In light of the findings of the review, the Central Bank requests that all Irish authorised MiFID investment firms and credit institutions providing MiFID II services review their costs and charges practices against the ESMA public statement and the findings, expectations and good practices set out in the letter and that an action plan is discussed and approved by the board of each firm by 31 March 2024.

3.18 Central Bank speeches during the period

(a) *An evolving supervisory approach in the funds sector*

On 9 November 2023, Patricia Dunne, Director of Securities and Markets Supervision delivered a [speech](#) entitled "An evolving supervisory approach in the funds sector".

Ms Dunne's remarks discussed some of the Central Bank's evolving supervisory approach and key regulatory priorities and in particular: (i) sustainable finance (ii) delegation and (iii) ELTIFs.

This supervisory evolution includes:

- an increased emphasis through the Central Bank's engagement with FMCs on the risks that are generated by funds which they are responsible for;
- greater focus and use of thematics and sector analysis;
- an increased focus on potential systemic risks from funds; and
- continued development of data and risk analytic capabilities.

Ms Dunne outlined that the Central Bank's intention is to direct greater attention towards management companies and their underlying funds; that firms should feel this change in approach in their engagement with the Central Bank, with a greater supervisory focus on product and product risk based discussion, as well as traditional prudential topics. As flagged in James O'Sullivan's [speech](#) (as outlined in our report covering the third quarter of 2023) the Central Bank intends to place greater focus on use of thematics or sector analysis facilitating the identification and assessment of sectoral risks, while also engaging with industry to promote higher standards.

On ESG matters - the Central Bank will host a workshop with key stakeholders in the funds industry to discuss the Central Bank's observations post the implementation of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector ("**SFDR**") and Taxonomy Regulation (EU) 2020/852 ("**Taxonomy**") in late November. The Central Bank has expressed support for the Commission's SFDR review to create a common language and classification system which defines what is considered green and sustainable.

Other areas of supervisory focus are:

- the adaptation of risk management frameworks – under which FMCs are required to consider sustainability risk factors when undertaking their due diligence on investments and to take sustainability risks into account in their organisational procedures and risk management policies.
- securities lending – the Central Bank plans to examine whether funds which engage in securities lending are in a position to meet their environmental or social characteristics if they have lent shares and those loaned shares lead to positions which would not qualify as sustainable investments.

- machine learning – the Central Bank’s intention is to expand its ESG analysis to incorporate machine learning practices, in particular natural language processing, in order to extract information from fund and industry documentation. It is examining ways to convert fund documentation and text data into database formats. In time, this will allow assessment of new types of data ranging from social indicators to hazardous waste, water, land usage and recycling practices. The Central Bank’s goal is to implement a broad data approach, incorporating data which can be used to assess the veracity of individual claims made within fund documentation.

On **Delegation** – Ms Dunne’s remarks note that ESMA have given significant consideration to the elements of substance and delegation, particularly by applying more focus to structures involving third country service providers. As part of the objective of supervisory convergence, ESMA will conduct a peer review on depositaries and another on outsourcing in 2024/2025. The speech notes the AIFMD review is also likely to bring targeted changes to the current regime to enhance the reporting of delegation activity, particularly to third countries. The proposals contained in the AIFMD review mark the start of a longer-term process that will take a more comprehensive look into delegation in Europe.

On **ELTIF 2.0** – the speech notes that the development the draft regulatory technical standards under the European Long-Term Investment Funds Regulation (EU) 2015/760 as amended by Regulation 2023/606/EU (the “**ELTIF Regulation**”) (as outlined at section 4.4(a) of this report). Ms. Dunne also noted that the proposed ELTIF chapter in CP155 (as outlined in section 3.1 of this report) contains only those rules deemed essential in ensuring investor protection and transparency and are aligned with the provisions that are also applicable to QIAIFs and RIAIFs.

For 2024, Central Bank supervisory priorities will also include to continue to focus on transparency and fair treatment of investors as well as broader financial stability risk.

- (b) *Implementing DORA (This is a further update to section 3.5(l) of the quarterly report covering the third quarter of 2023)*

On 23 November 2023, Gerry Cross delivered lengthy [remarks](#) on ‘Implementing DORA’ in his capacity as Central Bank Director of Financial Regulation, Policy and Risk and as Chair of the Joint ESA Sub-Committee on Digital Operational Resilience.

His speech provided an update on the ESA’s work on the Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (“**DORA**”) implementing regulations split into two phases.

The first phase – including regulations on risk management and simplified risk management; major incident classification; and outsourcing, including the register of outsourced services to be maintained by firms - is on track for submission to the Commission in early 2024.

The second phase – including the major incident reporting template; Threat Led Penetration Testing (“**TLPT**”); and managing chains of subcontracting – is on track for public consultation to start in the coming weeks so that they can be submitted to the Commission by the middle of 2024.

He also focused his remarks on outlining key guiding principles in developing regulatory standards and on a number of different specific aspects of DORA:

- (i) Operational resilience testing & TLPT;
- (ii) Information and communications technology (“**ICT**”) risk management, including ICT outsourcing risk;
- (iii) ICT related incident reporting; and
- (iv) Third party oversight regime.

(c) *Putting principles into practice: how regulation responds to change*

On 8 November 2023, Governor Makhoulf delivered opening [remarks](#) entitled 'Putting principles into practice: how regulation responds to change' at the [Financial System Conference 2023](#).

The conference brought together diverse perspectives from the Central Bank's wide range of stakeholders – including industry leaders, consumer representatives, and policymakers from Ireland, across the EU (and wider afield) – to discuss and debate the forces shaping the financial system.

Governor Makhoulf's remarks focused on how the Central Bank implements the following regulatory guiding principles to support positive outcomes and the "welfare of the people as a whole". Regulation must be (i) forward looking, (ii) connected, (iii) proportionate, (iv) predictable, (v) transparent and (vi) agile.

His remarks focused on how the implementation of the IAF reflects these principles. He noted that a frequently raised comment in the consultation was that the number and scope of 'prescribed responsibilities' is significant. To address these comments, the Central Bank have reviewed and reduced the number of responsibilities while maintaining overall coherence.

His speech signposted the Central Bank's decision to defer the application of the SEAR Regulations to INEDs/NEDs by one year to enable both the Central Bank and regulated firms to learn from the introduction of the new framework to executives in the first instance as well as how we will use the framework to inform its supervision. A twelve month learning period of the conduct standards application to INEDs/NEDs should enable firms to better manage the issues some have identified in reconciling the collective responsibility of boards with the IAF regime.

(d) *Private assets: A changing European landscape*

On 30 November 2023, the Central Bank published [remarks](#) delivered by Deputy Governor, Derville Rowland at the Irish Funds, Annual UK Symposium entitled 'Private Assets: A changing European landscape'.

Some key takeaways from the speech include:

On **AIFMD II**, Ms Rowland noted that the changes agreed as part of the AIFMD II review (*as outlined at section 1.1 of this report*) are appropriately targeted and the harmonisation of the rules for funds which undertake lending activity is seen as a positive development. In due course, the Central Bank will move to bring the provisions of the domestic loan origination framework into alignment with that of AIFMD II.

On **ELTIF 2.0**, there is significant work underway at an ESMA level to develop the draft regulatory technical standards under the revised ELTIF Regulation (*as outlined at section 4.4(a) of this report*). In Ireland, the Central Bank is taking steps to provide, for the first time, for an ELTIF which will be authorised under domestic funds legislation (*as outlined at section 3.1 of the report*).

On **emerging vulnerabilities**, referring to the capital market union agenda she noted the topics of liquidity and leverage will remain a key focus in Europe and at the Central Bank and in this regard noted the recent Central Bank measures in CP157 (*referred to in section 3.14 of this report*) on enhancing the resilience of Irish authorised sterling denominated LDI funds.

In terms of potential vulnerabilities, the remarks also highlight sustainable finance disclosures. ESMA are actively taking steps to address a potential vulnerability, namely the disconnect between a fund's name, a critical aspect for a retail investor when determining whether or not to invest, and the disclosures required in the SFDR. Ms Rowland expresses the Central Bank's support for the introduction of a labelling regime for investment products.

Ms Rowland also referred to steps the Central Bank has taken to provide clarity in terms of disclosure expectations, including hosting a recent workshop with industry representatives where participants were able to exchange views on the disclosures required under the SFDR and how standards could be raised across the sector. In due course, following further engagement with the sector, the Central Bank will provide further clarifications to ensure these disclosures best serve the end investor.

(e) *Maintaining stability in the face of volatility – financial regulation in a rapidly changing world*

On 14 November 2023, Deputy Governor Sharon Donnery delivered [remarks](#) at The Compliance Institute annual conference entitled 'Maintaining stability in the face of volatility – financial regulation in a rapidly changing world'.

In her remarks Ms Donnery outlined her thoughts about the challenging macro-economic environment, the risks on the horizon in the context of a rapidly changing financial sector, and what all these challenges mean for regulators and compliance professionals. Significantly, her remarks also touched on the regulatory, supervisory and compliance implications of artificial intelligence.

(f) *Navigating market abuse and regulatory surveillance*

On 28 November 2023 Patricia Dunne, Director of Securities and Markets Supervision delivered [remarks](#) entitled "Navigating Market Abuse and Regulatory Surveillance" at the Bloomberg Vault and Central Bank Seminar. Her remarks focused on the topic of market abuse and the significance of surveillance in combatting market abuse while ensuring the integrity of markets and the protection of investors.

Ms Dunne outlined the findings of the Central Bank's wholesale market conduct function which [published](#) an industry communication in October (*as outlined at section 3.16 of this report*) highlighting areas which firms should pay particular attention to following a [conduct risk assessment](#) of telephone and electronic communications in investment firms and credit institutions pursuant to MiFID II Directive (2014/65/EU) ("**MiFID II**"). This assessment sought to assess the frameworks and controls implemented by firms to ensure that the use, recording and monitoring of authorised telephone and electronic communications complies with MiFID II requirements.

Significantly, her remarks noted that over the last 4 years, there has been an evolution in the communications technology used. Webex, Teams and Zoom came to the fore during COVID and continue to be utilised by firms with other applications and platforms such as WhatsApp, Snapchat and Instagram continuing to evolve to meet customer demands. While acknowledging it is a difficult task for a firm to ensure that no employee is communicating with clients or other persons using these platforms, the firm must ensure that it is taking all reasonable steps to prevent unauthorised communications over unapproved channels. Culture and conduct are vital in this regard.

(g) *Walking the path – the transition to Net-Zero*

On 21 November 2023, as part of the 6th annual [Climate Finance Week](#) Deputy Governor Sharon Donnery delivered a [speech](#) entitled 'Walking the path – the transition to Net-Zero'. Her speech outlined broad themes about the climate change risk landscape and the increased importance of transition financing and planning. She also participated in a panel discussion about the critical role of transition finance in shaping the journey towards a net-zero future.

(h) *Consumer code and business ethics*

On 26 October 2023, the Central Bank published [remarks](#) delivered by Colm Kincaid, Director of Consumer Protection entitled 'New Frontiers in Business Ethics'.

Mr Kincaid's remarks centred on the Central Bank's commitment to the fundamentals of ethical behaviour and how culture, behaviours and ethical challenges have informed and directed the Central Bank's work. The speech noted that the concept of financial services is built fundamentally on trust and this means going beyond the legal requirements that any business must comply with, and establishing decision making processes and behaviours that are guided by ethical values.

Mr Kincaid described the components of financial conduct regulation as being akin to a three legged stool

- **Rules:** The rulebook provides the first leg - to set out the rules to drive positive behaviour and enable people to be held accountable for misbehaviour. The oversight of these rules by regulators provides an important and essential safeguard to the soundness of the system and the protection of the interests of consumers at large.
- **Culture:** Rules and their enforcement are limited in efficacy. In particular, rules intervene in people's behaviour only at very particular times and, as we now realise, people's day-to-day behavioural norms are heavily influenced by the prevailing culture – whether in a firm, a sector or society at large. For the second leg, firms themselves must have a culture of promoting ethical behaviour – and support from their industry body to do so.
- **Education:** The third leg is that consumers themselves need certain basic knowledge and ongoing information in order for them to be equipped to also look out for their own interests. This reflects that a well-informed and confident consumer is far better equipped to identify their specific needs and to hold firms to account to meet their ethical expectations in the context of that consumer's individual experience.

Continuous progress is needed on each of these three legs, recognising that progress on one is not a substitute for progress on another since they play different roles, albeit towards the same goal.

In the latter part of the speech Mr Kincaid outlined how the most powerful of these cultural 'common denominators' is that of placing consumers at the heart of commercial decision making. In that regard he notes the Central Bank revision of the framework of rules that underpin regulation of firms' behaviour, through its [Consumer Protection Code Review](#), and the implementation of the national legislation to provide for a more explicit [Individual Accountability Framework](#) in financial services. He outlined how these policy measures will provide a stronger platform for ethical behaviour within regulated financial service providers. The Central Bank recognises that firms need to internalise the Central Bank's detailed guidance in the context of their business and own the issues and the risks. Under the Code Review, for example, the Central Bank have proposed specific guidance as to how firms can secure their customers' interests. The Central Bank intends to be more open and engaged with stakeholders to continue the conversation on how to evolve a more ethical approach over time.

Finally, the remarks concluded in noting that the rapidly changing digital landscape is also reshaping how risks form and manifest. At a time of rapid change accelerated by digital innovation all participants need to reinforce a commitment to fostering ethical approaches to business.

3.19 Investment Fund Statistics Q3 2023

On 28 November 2023, the Central Bank published its Investment Fund [Statistics](#) for Q3 2022, which show net asset values of Irish regulated funds ("IFs") increased for the fourth successive quarter by €29bn to €3,854bn during the third quarter 2023.

4. Other Legal and Regulatory Developments

4.1 Companies (Miscellaneous Provisions) (Covid-19) Act 2020

On 15 December 2023, the Minister for Trade Promotion, Digital and Company Regulation [announced](#) that the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 related to the holding of virtual meetings, including annual general meetings ("AGMs"), has been further extended to 31 December 2024 following government approval.

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 makes temporary amendments to the Companies Act, 2014 which allow companies to hold fully virtual AGMs and other general meetings for the duration of the "interim period".

4.2 Central Securities Depositories Regulation 909/2014 ("CSDR")

- (a) *Regulation (EU/2845/2023) amending the CSDR ("**CSDR Refit Regulation**") (This is a further update to section 3.5 of the report covering the second quarter of 2023)*

On 27 December 2023, CSDR Refit [Regulation \(2845/2023\)](#) was published in the OJ.

The reforms contained in the CSDR Refit Regulation aims to reduce the financial and regulatory burden on central securities depositories (CSDs) and improve their ability to operate across borders, while also strengthening financial stability. Among other things, it will enable simpler passporting and improve supervision and settlement efficiency.

As outlined in our previous reports, the previously proposed mandatory buy-in framework will not apply, with the Commission having an option to re-introduce it in the future via an implementing act following a cost-benefit analysis by ESMA.

The CSDR Refit Regulation will enter into force on 16 January 2024 (that is, 20 days after its publication in the Official Journal of the EU (the "**OJ**")) and will be directly applicable.

- (b) *Consultation on technical advice on CSDR penalty mechanism*

On 15 December 2023, ESMA published a [consultation paper](#) on technical advice to the Commission on the penalty mechanism under the CSDR.

The public consultation is open until 29 February 2024. The feedback it receives will feed into ESMA's technical advice, which is expected to be sent to the Commission by the end of September 2024.

4.3 Department of Finance

- (a) *Funds sector review 2030 updates (This is a further update to section 4.3(c) of the report covering the second quarter of 2023)*

On 18 October 2023, the Central Bank has published its [response](#) to the Funds Sector Review 2030 entitled 'Perspectives on the Evolution of the Investment Funds Sector in Ireland'.

In its response the Central Bank expresses support for the Department of Finance review of the investment funds sector with the objective of ensuring that the sector is resilient and that it delivers value for investors and for the Irish and European economies. In this regard, the Central Bank's submission sets out five priority areas that the Central Bank believes will be critical to the future development of the investment funds sector in Ireland:

- delivering positive outcomes for the domestic economy and investors;
- developing a macro-prudential framework for investment funds;
- maintaining regulatory effectiveness;
- sustainable finance; and

- digital transformation.

The responses to the public consultation will form the basis for a series of targeted engagements by the Department of Finance's multi-disciplinary review team (the "**Review Team**") with respondents as well as national and international stakeholders in late 2023 and into 2024. Further consultations may be held at a later stage in the review.

On 21 December 2023, the Minister for Finance, published a [progress update](#) on the review underway of the funds sector in Ireland - [Funds Sector 2030: A Framework for Open, Resilient & Developing Markets](#).

The progress update noted that 193 responses to the consultation were received, with over 50 responses being from industry participants and 140 from private individuals. The receipt of 140 submissions from private individuals was also significant as these provided useful insight into the issues impacting retail investors.

The public consultation sought views on the medium term and long-term issues facing the investment funds sector in Ireland. The progress update highlights the main trends, risks, challenges and opportunities facing the funds industry in Ireland out to 2030, as identified in the responses.

In general, the future envisioned in the submissions focused on the continued growth of ETFs and MMFs, combined with an expansion of private assets, and a gradual change in the composition of skills across the sector as technological and digital solutions are adopted.

The progress update notes broad support in the submissions for retaining the Irish real estate funds ("IREF"), real estate investment trusts ("REIT") and Section 110 structures, and accordingly further work will be required to ensure the Review provides the Minister with an analysis of all policy options.

The Review Team has noted the following areas, which are the immediate focus of its work:

- (1) further understanding the commercial rationale for an unauthorised product structure for private assets and reviewing other structures used for such investment strategies;
- (2) seeking additional detail on the impact of technological change and policy changes which could be considered;
- (3) sourcing data to better understand the savings landscape in Ireland including its size and existing distribution channels etc.;
- (4) reviewing tax advantaged savings and investment schemes available in other jurisdictions, such as the UK and Sweden;
- (5) examining the structured finance/asset holding company regimes in other countries, especially Luxembourg and the UK and how those regimes compare to the Section 110 regime;
- (6) soliciting additional views on potential alternatives, if any, to the existing IREF and REIT regimes and potential improvements to these existing regimes; and
- (7) seeking additional data on the impact of the institutional sector, including investment funds, on the property market, especially housing.

The Review Team has reviewed each submission and the proposals raised are now being considered in further detail. Additional engagement with industry participants is well underway and will continue into 2024, seeking additional data and deeper insights on the issues raised. A report will be presented to the Minister by summer 2024. Decisions on the final outputs, publications and implementation of recommendations will be a matter for the Minister and, where relevant, Government.

- (b) *Finance (No.2) Act 2023 (This is a further update to section 4.4(g) of the report covering the second quarter of 2023)*

As is the case with most EU member states and multiple jurisdictions globally, on 18 December 2023, Ireland introduced new OECD Pillar Two rules in Finance (No.2) Act 2023 ([S.I. No. 39 of 2023](#)), which applies a 15% global minimum corporate tax rate for large multinationals for accounting periods commencing on or after 31 December 2023.

The corporation tax rules will apply to members of a groups that have annual consolidated revenues in excess of the €750 million threshold. Standalone non-consolidated entities with annual revenues in excess of €750 million are also expected to be in scope.

The principle of tax neutrality for collective investment vehicles has been recognised in the rules as there is a carve-out for an "investment entity" (as defined). In practice, it is expected that many investment funds and entities within investment fund structures should fall outside the scope of the rules. However, it is not clear that all collective investment vehicles will satisfy the conditions to be considered an "investment entity".

It is expected that the Irish Revenue Commissioners will release guidance on the conditions in the coming months to assist with this analysis. There is no exclusion applicable to investment management entities, which need to be assessed based on the relevant facts and circumstances. Each structure should be assessed on a case by case to assess the potential impact, if any, of these new rules.

Legislation has also been included in Finance (No.2) Act 2023 to apply new tax defensive measures (e.g. withholding tax) to certain outbound payments of interest, royalties and distributions (including dividends) towards jurisdictions on the EU list of non-cooperative jurisdictions (the 'EU Blacklist'), no-tax, and zero-tax jurisdictions. These measures are being introduced following recommendations by the Commission that certain EU Member States take actions to reduce aggressive tax planning. Similar measure are being introduced by other EU member states

The measures could impose withholding tax on certain payments of interest, royalties and dividends by an Irish company to an "associated entity" located in a relevant jurisdiction. The provisions are to apply to payments made on or after 1 April 2024. However, grandfathering applies in the case of existing arrangements in place on or before 19 October 2023, such that the provisions would only apply to payments made on or after 1 January 2025 under such arrangements. These measures will not apply to the long-standing withholding tax exemption which applies to distributions and redemption payments made by regulated funds to non-resident investors, which remains in place. The draft measures, once introduced, are not expected to have an impact on the vast majority of Irish funds. The draft measures, may be relevant for debt financing of regulated Irish funds by associated entities in no-tax, and zero-tax jurisdictions.

4.4 ESMA & the European Supervisory Authorities (the "ESAs")

- (a) *Final report on ELTIF regulatory technical standards (This is a further update to section 4.6(a) of the quarterly report covering the second quarter of 2023 and section 3.1 of this report)*

On 19 December 2023, ESMA published its final report setting out the draft [Regulatory Technical Standards](#) ("RTS") for the ELTIF Regulation. The RTS cover:

- the circumstances in which the life of a ELTIF is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors; and
- the costs disclosure.

The RTS final report delineates the specific rules that are to be applied providing a detailed framework for aspects such as minimum holding period and maximum redemption frequency, choice of liquidity management tools, notice period and maximum percentage of liquid assets that can be redeemed.

Minimum holding period:

ESMA propose allowing the ELTIF manager to select the minimum holding period that is best adjusted to an individual ELTIF, based on criteria set in the RTS, and upon justifications to the NCA.

Maximum redemption frequency:

ESMA proposes to include a common standard (maximum quarterly redemption frequency), while allowing the ELTIF manager to deviate from it, upon justifications to its NCA.

Choice of liquidity management tools:

It is proposed the mandatory implementation of at least one anti-dilution mechanism (in addition to notice period), and redemption gates, while allowing the ELTIF manager to deviate from it, in specific circumstances, and upon justifications to the NCA.

Notice period and maximum percentage of liquid assets that can be redeemed:

Where the redemption notice period is less than 12 months, ESMA proposes that in addition to applying minimum percentages of liquid assets, the length of that notice period should be determined by different percentages of maximum amount of liquid assets that can be redeemed. ESMA notes that the proposed requirements seek to reach a balance by proposing prescriptive rules but allowing ELTIF managers to deviate from these under specific circumstances. However, initial industry feedback would suggest that certain managers of semi-liquid funds may find that these requirements are challenging to implement in practice for certain investment strategies given the potential impact on returns.

Next steps

ESMA has submitted the draft RTS to the Commission for endorsement and final approval. From the date of submission, the Commission has three months to decide whether to adopt the RTS. The Commission may extend that period by one month.

Our recent [briefing note](#) explores the ELTIF RTS in further detail.

- (b) *New Union Strategic Supervisory Priority ("USSP") (This is a further update to section 4.6(b) of the quarterly report covering the fourth quarter of 2023)*

On 9 November 2023, ESMA [announced](#) it is changing its USSP to focus on cyber risk and digital resilience alongside ESG disclosures.

The new USSP will come into force in 2025, at the same time as DORA. This timeline is intended to provide supervisors and firms in member states with sufficient time to prepare for compliance with the new regulatory requirements. Meanwhile, ESMA and national competent authorities ("NCAs") will carry out preparatory work planning and shaping the supervisory activities to undertake under this priority.

In addition, ESMA and NCAs will continue their work on the second priority – ESG disclosures. The aim is to tackle greenwashing, increase investors understanding and embed sustainability requirements when firms advise investors. ESG disclosures will remain the focus in 2024 across key segments of the sustainable finance value chain such as issuers, investment managers and investment firms.

(c) *ESMA chair remarks on the role of asset management*

On 24 November 2023, ESMA published a [speech](#) given by Verena Ross, ESMA Chair at the EFAMA conference entitled 'The role of asset management – channelling capital into financial markets preserving financial stability and sustainability aims' which addresses the policy and regulatory agenda in the sector.

Points of interest in the remarks include:

Leverage and valuation risks. Ms Ross provides a summary of regulatory initiatives to preserve financial stability in the non-bank financial intermediation (NBFII) sector, focusing on the asset management sector. She notes that ESMA is actively monitoring leverage and valuation risks

Sustainable finance factsheet. ESMA, in collaboration with the other ESAs, has been working on a financial education factsheet on sustainable finance that will be published at the end of November 2023 (*outlined at section 4.11(k) of this report*).

ESG disclosures and greenwashing. Ms Ross refers to ESMA upgrading ESG disclosures to one of its Union strategic supervisory priorities. Its primary objective is to evaluate to what extent market participants adhere to sustainability-related regulatory provisions and standards in practice.

On the Commission's consultation on the assessment of the SFDR, ESMA envisages very simple disclosures for retail investors and more comprehensive information for more sophisticated investors. The key is to differentiate the information that are key for retail investors (e.g. the level of greenness disclosed in a simple and understandable manner) vs. more technical information relevant to sophisticated investors (e.g. principal adverse impact ("PAI") disclosures that would still be available and disclosed to provide full transparency).

On greenwashing, its findings regarding engagement show that some funds doing bespoke active engagement with companies do not always provide the necessary details about how this engagement is actually carried out (e.g. intermediary milestones, how progress on engagement impacts buy or sell decisions). Additionally, ESMA notes that some funds reference engagement excessively, even when engagement is not a binding element of their ESG strategy. The ESAs will publish their final reports on greenwashing in May 2024.

Noting the ESAs proposed publication of their final report on the review of the Commission Delegated Regulation (EU) 2022/1288 (the "**SFDR Delegated Regulation**"). Its aim has been to improve the current templates within the existing regime by introducing language simplification and a 'dashboard', taking into account the results of consumer testing. Ms Ross notes this is only a first step towards the simplification of disclosures that should be further improved in the context of the Commission's overall assessment of SFDR.

Guidelines on using ESG or sustainability-related terms. ESMA continues to consider having guidelines for investment funds using ESG or sustainability-related terms in their names a priority. It believes guidelines will help investors choose sustainability-related investment funds with more clarity on their real sustainability characteristics. It will shortly communicate more about the next steps relating to this initiative (*outlined at section 4.14(b) of this report*).

ESG ratings. ESMA is closely monitoring the progress of the ESG rating file and is hopeful that an agreement can be reached before the end of the European Parliament's term.

Shorter settlement cycle. The EU asset management industry is preparing for the [move to T+1 in the U.S.](#) by the end of May next year. ESMA is separately [examining](#) by way of a call for evidence the costs and benefits of a possible similar reduction of the settlement cycle in the EU (*outlined in section 4.4(q) of this report*) and possible regulatory measures that would smoothen the impact for EU market participants of the US change. Among other things, ESMA is actively engaging with EFAMA to understand the implications for EU asset managers of different settlement cycles between the US and EU.

- (d) *Guidelines for reporting under EMIR (This is a further update to section 4.5 of the report covering the fourth quarter of 2022)*

On 23 October 2023, ESMA published the official [translated versions](#) of its guidelines for reporting under EMIR and the EMIR Refit Regulation ((EU) 2019/834).

The guidelines will apply from 29 April 2024, when counterparties and trade repositories ("TRs") will become subject to new to the new derivatives reporting obligations in Article 9 of EMIR and the TRs' obligations under Articles 78 and 81 of EMIR.

The guidelines apply to financial and non-financial counterparties, to TRs and to NCAs. The guidelines seek to enhance the harmonisation and standardisation of reporting under EMIR contributing to the high quality of data necessary for the effective monitoring of systemic risk. The guidelines cover a wide set of topics relating to reporting, data quality and data access.

- (e) *Final report on amendments to position guidelines under EMIR*

On 18 December 2023, ESMA published its [final report](#) on amendments to its guidelines on position calculation under Article 80(4) of EMIR, as amended by technical standards introduced under the EMIR Refit Regulation.

The revised guidelines will apply to TRs that are registered or recognised by ESMA in accordance with Articles 55 and 77 of EMIR respectively. The guidelines are being revised to ensure full alignment with the requirements set out by the technical standards and the guidelines on reporting under the EMIR Refit Regulation.

ESMA outlines that all data should have been updated to the most recent standards by the time the revised guidelines apply. ESMA recognises that a set of new EMIR Refit fields will increase the size and complexity of the position report compared to its current state. However, its aim has been to increase the level of information included in the position report to make it easier for authorities to perform their duties.

ESMA intends to delay the application date of the revised position guidelines until the relevant EMIR Refit reporting transition period in respect of certain existing transactions has been concluded. Accordingly, the position guidelines will apply from 28 October 2024. On 29 April 2024, the original version of the position guidelines will be repealed, allowing TRs a six-month transition period.

- (f) *PRIIPs KID Q&A (updated) (This is a further update to section 4.13 of the report covering the fourth quarter of 2022)*

On 5 December 2023, the ESAs published an [updated version](#) of its consolidated Q&A on the PRIIPs KID.

In particular, the new Q&A 5 in section XI 'Investments Funds' confirms that even where an investment fund delegates functions to third parties, the PRIIP KID manufacturer can only be the management company or the alternative investment fund manager of the fund, or, in the case of a self-managed UCITS or internally managed AIF, the fund itself.

(g) *ESAs consultation on second set of RTS, ITS and guidelines under DORA (This is a further update to section 4.6(g) of the report covering the second quarter of 2023)*

On 8 December 2023, the joint committee of the ESAs published consultation papers on draft regulatory technical standards (RTS), implementing technical standards (ITS) and guidelines under DORA. The ESAs have published an [overview](#) note on the consultations.

This [second batch](#) comprises the following:

- RTS and ITS on content, timelines and templates on incident reporting;
- Guidelines) on aggregated costs and losses from major incidents;
- RTS on subcontracting of critical or important functions;
- RTS on oversight harmonisation;
- Guidelines on oversight cooperation between ESAs and competent authorities; and
- RTS on threat-led penetration testing.

The deadline for responses is 4 March 2024. The ESAs expect to submit the draft standards and guidelines to the Commission by 17 July 2024.

(h) *Statement on the effective application of the Markets in Crypto Assets Regulation (EU) 2023/1114 ("MiCA") (This is a further update to section 4.2(d) of the report covering the second quarter of 2023)*

On 17 October 2023, ESMA published a [statement](#) entitled 'Effective application of the MiCA Regulation' which clarifies the timeline for implementation of MiCA and encourages market participants and NCAs to begin preparation for the transition to MiCA.

The statement noted that while the MiCA requirements will not apply until December 2024, with transitional periods available to member states holders of crypto-assets and clients of crypto-asset service providers may not benefit from full rights and protections afforded to them under MiCA until as late as 1 July 2026.

The statement further noted that the reverse solicitation exemption for third country firms will be subject to further guidance by ESMA and that it should be understood as very narrowly framed and as such must be regarded as the exception; and it cannot be assumed, nor exploited to circumvent MiCA.

(i) *ESAs proposed extension of the EMIR equity option exemption*

On 20 December 2023, the ESAs published [joint draft regulatory technical standards \(RTS\)](#) under EMIR where they propose a two-year extension to the equity option exemption from bilateral margining, as well as issuing a no-action [opinion](#).

The draft RTS provide clarity to market participants on equity options from 4 January 2024, the date on which the current temporary exemption is set to expire. More specifically, the ESAs are proposing to extend the temporary exemption and are issuing a no-action Opinion which includes clarifications on the supervisory expectations.

The ESAs take note of the amendments to EMIR agreed by the European Parliament's Committee on Economic and Monetary Affairs (ECON Committee) on 28 November 2023 and on 6 December 2023, in the context of the ongoing EMIR review negotiations which would introduce specific provisions on equity options, including a permanent exemption.

(j) *Report on independence of supervisory authorities*

On 25 October 2023, the ESAs jointly [released](#) a paper detailing criteria on the independence of supervisory authorities. The paper highlights the independence of supervisory authorities is key in offering robust protection within the financial sector and instilling trust in the financial system.

The ESAs use the main principles the four key elements of supervisory independence:

- (1) Operational independence means ensuring that supervisory authorities have the resources, legal powers and ability to operate without influence from the sector they supervise or the government.
- (2) Personnel independence requires transparent rules for appointing, selecting, and removing staff and governing body members, who must adhere to high ethical standards.
- (3) Financial independence - that authorities have sufficient financial resources to fulfil their mandates.
- (4) Accountability and transparency – including annual disclosure of comparable data on supervisory decisions, activities, methods and statistics – are also recognised as crucial to support fair, effective supervision.

The report notes that these criteria are vital in ensuring that supervisory bodies make impartial, fair, and transparent decisions. The goal of the supervisory independence criteria is to maintain the effectiveness and transparency of supervisory authority action.

While the criteria are non-binding, they are intended to serve as a practical framework to guide action supporting supervisory independence. The criteria will also be used by the ESAs to assess the independence of supervisory authorities.

(k) *Verena Ross speech on ESMA's data strategy (This is a further update to section 4.6(v) of the quarterly report covering the second quarter of 2023)*

On 17 October 2023, ESMA published a [speech](#) by Verena Ross, ESMA Chair, on ESMA's data strategy entitled 'Being ready for the Digital Age'. Key takeaways included:

- On artificial intelligence ("AI") - AI could help supervisors unlock the full potential of the data they have access to. It could enable them to combine and analyse structured and unstructured data from different sources and may also help to identify new types of risks or bad behaviour that could be missed by "traditional" data analysis and monitoring systems.
- On efficient reporting and use of data - An important part of ESMA's data strategy is ensuring the overall efficiency of data reporting. It is very important to ensure that it makes efficient and effective use of the data that NCAs receive.

- On MiCA and DLT Pilot regime - Ms Ross noted that new technologies and regulatory work on digital finance such as MiCA and the DLT pilot require supervisors to set up new data collection and monitoring capabilities, which also provide the opportunity to explore more efficient ways to monitor markets. In line with its data strategy, ESMA has launched two projects to support NCAs in developing the necessary capabilities to explore these opportunities.

(l) *Report on costs and performance of EU retail investment products*

On 18 December 2023, ESMA published its sixth [market report](#) on the costs and performance of EU retail investment products. The report and the accompanying [press release](#) provide a summary of ESMA's key findings including that the average cost of investing in key EU retail financial products has declined as at the end of 2022. However, cost differences persisted across EU member states.

(m) *Guidelines on stress testing scenarios under the Money Market Funds Regulation ("MMFR")*

On 19 December 2023, ESMA has published its [Final Report](#) on the guidelines on stress test scenarios ("the **Guidelines**") under the MMFR. The revised methodology includes parameters reflecting the liquidity stress affecting the money market and a new risk factor to simulate the additional impact of asset sales under stress market conditions.

The new 2023 parameters set out in the updated Guidelines and the revised methodology will have to be used for the purpose of the first reporting period following the start of the application of the updated Guidelines. The section of the Guidelines related to the common reference parameters of the stress test scenarios are updated at least every year considering the latest market developments.

(n) *Discussion paper on digitalisation*

On 14 December 2023, ESMA published a [discussion paper](#) (the "DP") on investor protection topics linked to digitalisation including on online disclosures, digital tools, and marketing practices, such as the use of influencers and gamification under MiFID II. The DP explores the evolving landscape of retail investments. This includes examining the recent surge in the adoption of digital tools and social media by firms and retail investors following the COVID-19 pandemic and exploring how technology impacts retail investor behaviour and decision-making. ESMA assesses the opportunities and the potential risks linked to digitalisation based on the supervisory experience of the NCAs.

ESMA sets out draft recommendations on numerous issues, following the main investor protection topics. These include layering and accessibility of information, digital marketing communications and practices (such as on social media and through the use of third parties such as affiliates and 'finfluencers' (financial investment influencers), gamification, and various digital engagement practices such as nudging techniques and possible dark patterns.

The DP is addressed to NCAs and firms subject to MiFID II and their clients. However, given the focus on investor protection issues, it is also addressed to investor and consumer organisations, investment firms and credit institutions providing investment services and activities, UCITS management companies, and external AIFMs when providing investment services.

The deadline for comments on the DP is 14 March 2024. Responses will help support ESMA's convergence work and prepare it for potential related mandates for technical advice and standards. ESMA also intends to conduct a survey to gather insights, experience and feedback from retail investors on the subject of digitalisation within investment services.

(o) *New Q&As MiFID, MiFIR and BMR*

On 15 December 2023, ESMA published an updated version of its [Q&As](#) on investor protection and intermediaries under the MiFID II Directive and the Markets in Financial Instruments Regulation ("MiFIR").

Q&A 13 in the information on costs and charges section has been updated to clarify that the requirement relating to disclosure of "all in fees".

On 15 December 2023, ESMA published an updated version of its [Q&As](#) (version 27) on the Benchmarks Regulation ((EU) 2016/1011) ("BMR"). ESMA has modified its answers to:

- Q&A 4.4 on the application of the BMR outside the EU under Article 2(1) of the BMR.
- Q&A 9.3 on transitional provisions applicable to third country benchmarks under Article 51(5) of the BMR.

(p) *BMR Brexit statement (updated)*

On 15 December 2023, ESMA published an updated [statement](#) (previously updated March 2021) concerning the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks under the BMR.

The statement specifies the EU's regulatory approach towards UK-based third-country benchmarks as well as UK endorsed and recognised benchmarks, in light of the BMR transitional period extension to 31 December 2025. During the BMR transitional period, third country benchmarks can still be used by supervised entities in the EU if the benchmark is already used in the EU as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund. This allows third country UK-based benchmarks to be used (even if they are not included in the ESMA register).

Similarly, during the BMR transitional period, deletion from the ESMA register does not have an effect on the ability of EU supervised entities to use those third country benchmarks that were endorsed or recognised in the UK before the end of the Brexit transition period.

(q) *Call for evidence on shortening the settlement cycle*

On 5 October 2023, ESMA issued a [call for evidence](#) ("CfE") on the costs and benefits of a possible reduction of the settlement cycle in the EU.

The CfE also seeks to identify whether any regulatory action is needed to smooth the impact for EU market participants of the planned shortening of the settlement cycle to T+1 in other jurisdictions, such as the US.

ESMA seeks input, including quantitative evidence, from all stakeholders involved in financial markets not only those in financial market infrastructure by 15 December 2023. ESMA may provide an earlier report to the Commission identifying possible regulatory actions to address the impact for EU market participants of the US move to T+1.

4.5 European Commission (the "Commission")

(a) *Work programme for 2024*

On 17 October 2023, the Commission adopted its [2024 Work Programme](#) setting out key initiatives for 2024, including 18 new initiatives, and how it will deliver on political priorities. It includes proposals relating to timelines for sustainability reporting under the EU Accounting Directive, reporting relating to investment support; and the BMR, including use of third-country benchmarks.

Proposal on amending the BMR

As part of the work programme the Commission published a [legislative proposal](#) and a related [FAQ document](#) it has adopted for a Regulation amending the BMR as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country and certain reporting requirements. It proposed the amending regulation will apply from 1 January 2026.

The proposed Regulation is part of a package of measures in the Commission's 2024 work programme that are intended to streamline reporting requirements and reduce the associated regulatory burden. In line with this objective, and in response to a mandate to review the BMR's scope and its rules on the use of non-EU benchmarks, the proposed Regulation aims to address two identified shortcomings:

- Insufficient proportionality in the current BMR. Notably, administrators of non-significant benchmarks are subject to a registration requirement with effect from the first use of a benchmark they offer.
- Non-EU benchmark administrators face a significant additional compliance burden in seeking access to the EU market because of the requirement to obtain recognition or endorsement. This is potentially dissuasive and risks reducing the number and variety of benchmarks available to EU benchmark users.

The Commission believes that the BMR's policy objectives can still be achieved if it focuses on critical benchmarks, significant benchmarks, EU climate transition benchmarks (EU CTBs) and EU Paris-aligned benchmarks (EU PABs). Accordingly, the proposed Regulation requires only administrators of those categories of benchmarks to continue to be subject to the registration or authorisation requirement and to the majority of the BMR's substantive requirements. The threshold for determining a benchmark's significance should be calculated based on its use within the Union, without distinguishing between EU and non-EU benchmarks. Competent authorities (for EU benchmarks) and ESMA (for non-EU benchmarks) should be able to designate benchmarks below the quantitative threshold where they meet certain qualitative criteria demonstrating their impact in the Union.

(b) *Directive on distance marketing of financial services contracts*

On 23 October 2023, the Council of the EU published a [press release](#) announcing that it has adopted the [proposed Directive](#) on financial services contracts concluded at a distance (2022/0147(COD)).

The proposed Directive is intended to protect EU consumers from misleading online financial marketing practices and empower them to make informed decisions when concluding remote contracts.

The press release highlights that the final text of the proposed Directive:

- improves the rules on information disclosure and modernises pre-contractual information obligations (however, member states can impose stricter national rules in this area);
- establishes the right of consumers to request human intervention on sites that display automatic information tools such as chatbots; and
- facilitates the right of withdrawal from contracts concluded at a distance through a "withdrawal function" in the provider's interface.

On 28 November 2023, the [directive](#) (EU) 2023/2673 on financial services contracts concluded at a distance (2022/0147(COD)) was published in the OJ.

EU member states must publish their transposing legislation by 19 December 2025 and a further six months to apply them.

- (c) *Emergency measures on central counterparty ("CCP") collateral requirements under EMIR*

On 28 November 2023, the Commission adopted a [Delegated Regulation](#) (together with an [Annex](#)) (the "**Amending Regulation**") amending the RTS laid down in Delegated Regulation (EU) 153/2013 relating to the extension of temporary emergency measures on collateral requirements expanding the pool of eligible collateral that may be provided to CCPs under EMIR. ESMA had published a [final report](#) containing a draft of the Amending Regulation on 4 October 2023.

The modifications in the Amending Regulation are temporary (for six months after it entered into force to expire on 29 May 2024).

- (d) *Regulation (EU) 2021/0378 on European single access point (the "ESAP") (This is a further update to section 4.1(a) of the report covering the fourth quarter of 2022)*

On 27 November 2023, the EU Council [adopted](#) the [regulation](#) that will create the ESAP providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability.

The ESAP will offer free, user friendly, centralised and digital access to financial and sustainability-related information made public by European companies, including small companies. This will facilitate the decision-making process for a broad range of investors, including retail investors.

Alongside the ESAP Regulation an [Omnibus Regulation](#) and an [Omnibus Directive](#) have been adopted by the Council which will amend a range of EU legislation in the areas of capital markets, financial services and sustainability to facilitate the provision of information to ESAP, whether by corporates themselves or by the relevant competent authority.

The ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation. This phasing-in will ensure that European regulations and directives will enter into the scope of ESAP within four years, in order of priority.

4.6 Financial Action Task Force ("FATF")

On 27 October 2023, following the conclusion of the most recent plenary of the FATF it has [announced](#) that the Cayman Islands has been removed from the FATF's list of "jurisdictions under increased monitoring" (the "**FATF Monitoring List**") with immediate effect.

The Commission maintains a list of high-risk third countries ("**EU AML List**"), which typically includes the countries on the FATF Monitoring List. Now that the Cayman Islands has been removed from the FATF Monitoring List, removal from the EU AML List is expected to follow shortly, the EU having confirmed to the Cayman Islands Government that it does not require further measures beyond those of the FATF for removing the Cayman Islands from its list.

On 12 December 2023, the Commission adopted a [Delegated Regulation](#) to amend the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies produced under Article 9(2) of the Fourth Money Laundering Directive ((EU) 2015/849).

The Delegated Regulation will amend the Annex to Delegated Regulation (EU) 2016/1675 by deleting the Cayman Islands and Jordan from the list of third countries that have been identified as having strategic AML and CTF deficiencies. With respect to the Cayman Islands, the EU having confirmed to the Cayman Islands Government that it does not require further measures beyond those of the FATF for removing the Cayman Islands from its list.

A recent [advisory](#) from the Walkers Cayman Islands team summarises the FATF announcement.

4.7 Financial Stability Board ("FSB")

(a) *Report on non-bank financial intermediation ("NBF")*

The FSB has published a [global monitoring report](#) describing broad trends in NBF before narrowing its focus to the subset of NBF activities that may be more likely to give rise to vulnerabilities. The size of the NBF sector decreased in 2022—the first notable decrease since 2009, which can be largely attributed to the impact of higher interest rates on asset valuations.

(b) *Recommendations on liquidity mismatch in open-ended funds ("OEFs") (This is a further update to section 3.9 of the report covering the third quarter of 2023)*

On 20 December 2023, the FSB published a [policy paper](#) setting out revised policy recommendations to address structural vulnerabilities from liquidity mismatch in OEFs, incorporating feedback from the public consultation.

The FSB's revised recommendations are addressed to financial regulatory and supervisory authorities and set out the key objectives for an effective regulatory and supervisory framework to address vulnerabilities arising from liquidity mismatch in OEFs. Combined with the new IOSCO guidance on anti-dilution LMTs (*outlined at section 4.10(b) of this report*), is a significant strengthening of liquidity management by OEF managers compared to current practices.

To address structural liquidity mismatch in OEFs, the revised recommendations provide greater clarity on the redemption terms that OEFs can offer investors, based on the liquidity of the OEF asset holdings. Authorities should set expectations for OEF managers to use a mixture of quantitative and qualitative factors when determining the liquidity of OEF assets in normal and stressed market conditions. The revised recommendations seek to achieve greater inclusion of anti-dilution LMTs in OEF constitutional documents as well as greater use of, and greater consistency in the use of, anti-dilution LMTs.

4.8 Screening of Third Country Transactions Act 2023 (the "Act") (*This is a further update to section 3.10 of the report covering the third quarter of 2023*)

On 31 October 2023, having considered the Screening of Third Country Transactions Bill 2022, the President has signed the legislation and it has accordingly [become law](#).

In recognition of the need to also protect Ireland's critical technology and infrastructure from potentially harmful foreign investment, the Screening of Third Country Transactions Act 2023 will introduce an inward investment screening mechanism into Ireland for the first time.

The Act will give full effect to [Regulation \(EU\) 2019/452](#) of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union and facilitates the introduction of an investment screening mechanism in Ireland.

This regulation is a response to the growing concerns amongst member states regarding the purchase of a number of strategic European companies by foreign-owned firms (and in certain cases, state-owned firms). This screening mechanism will provide for reviews of certain third country investments relating to critical technology, critical infrastructure, critical raw materials, sensitive data or media plurality, to determine whether these transactions pose a risk to Ireland's security or public order. The Act empowers the Minister for Enterprise, Trade and Employment to investigate, authorise, condition, or prohibit foreign investments based on a range of security and public order criteria.

The key provisions of the Act are to:

- define the nature, scale and type of investments that should undergo investment screening (for example, critical technologies, infrastructure, raw material, or sensitive data);
- set out the factors that will be considered when applying screening to particular foreign investments (that is, the threat posed to security and public order as a result of the target being acquired, the degree of control being applied, or the risk associated with the acquiring party);
- empower the Minister to assess, investigate, authorise, condition, or prohibit foreign investments based on a range of security and public order criteria;
- establish an Investment Screening Advisory Panel to inform and advise the Minister in relation to the screening of specific foreign investments;
- outline appeals mechanisms that balances the need to ensure fair procedure whilst protecting the security interests of the State; and
- set out the penalties that may apply to those parties failing to fulfil all of the criteria required for an investment undergoing screening, or parties that breach Ministerial orders arising as a result of the screening process.

It is intended that the new screening mechanism will come into force by ministerial order during Q2 2024.

4.9 UK Financial Conduct Authority ("FCA")

Consultation on implementing the overseas funds regime ("OFR") (This is a further update to section 3.8 of the report covering the third quarter of 2023)

On 3 December 2023, the FCA has published its [consultation paper](#) on implementing the OFR (the "CP"). The CP contains proposed new rules and guidance to put the OFR into operation, so that overseas funds that are authorised and supervised in their home country can:

- apply for FCA recognition under the OFR; and
- identify which FCA rules will require compliance.

This consultation outlines how the FCA would recognise funds for offer in the UK, following an equivalence determination by the UK Treasury under the OFR. Pending an equivalence decision from the UK Government, operators of schemes in the temporary marketing permissions regime ("TMPR") will be given landing slots in which to apply for recognition under OFR.

The UK Treasury has not yet made a decision as to whether additional requirements will be imposed on funds as part of the equivalence regime, but the FCA is looking carefully at the valuations of assets in funds. On the Sustainability Disclosures Requirements regime, the CP notes the FCA will work with the Treasury to understand the options for extending the SDR to overseas recognised schemes, including those marketing under the OFR.

The consultation remains open until 12 February 2024 and it is anticipated that a final policy statement with final rules will be published by the FCA in the first half of 2024.

- (a) *Speech on updating and improving UK regime for asset management*

The FCA during the period published a [speech](#) on its priorities for updating and improving the UK regime for asset management.

Some key takeaways to note from these remarks include that the FCA "won't be taking forward" its plans to consolidate the EU regimes on UCITS and AIFMD (following on from its suggestions and feedback received to its [discussion paper](#) earlier this year on the future of UK asset management regulation post-Brexit).

The speech also outlines how the FCA will retain the core framework of the AIFMD, while considering making it more proportionate in some areas, and more tailored to the UK market.

The FCA will be consulting on amending the AIFMD regime and re-evaluating the appropriateness of AIFMD rules for non-UCITS retail funds in 2024. In 2025 the FCA will review the regulatory reporting regime.

4.10 IOSCO

(a) *Final report on policy recommendations for crypto and digital asset markets*

On 16 November 2023, IOSCO published its [final report](#) on policy recommendations for crypto and digital asset markets.

The recommendations are aimed at activities performed by crypto asset service providers which include offering, admission to trading, ongoing trading, settlement, market surveillance and custody, and marketing and distribution (covering advised and non-advised sales) to retail investors. The recommendations are consistent with the IOSCO objectives and principles for securities regulation and relevant supporting IOSCO standards, recommendations and good practices.

The recommendations are addressed to relevant regulatory authorities and are expected to be influential in support of greater consistency of regulatory frameworks and oversight in IOSCO member jurisdictions.

(b) *Guidance on anti-dilution liquidity management tools ("LMT") (This is a further update to section 3.11(a) of the report covering the third quarter of 2023)*

On 20 December 2023, concurrent with FSB paper (*outlined at section 4.7(b) of this report*), IOSCO published its [final report](#) on guidance on anti-dilution LMTs for the effective implementation of the recommendations for liquidity risk management for collective investment schemes.

To ensure more effective liquidity risk management practices, IOSCO's LMT guidance provides detailed guidance on the design and use of anti-dilution LMTs by OEF managers. IOSCO has amended the guidance to provide more flexibility in the use of anti-dilution LMTs. The guidance sets out key operational, design, oversight, disclosure, and other factors and parameters that responsible entities should consider when using anti-dilution LMTs.

Both IOSCO and the FSB will review members' progress in implementing their respective revised recommendations and guidance. A stocktake of the measures and practices adopted will be completed by the end of 2026. By 2028, the FSB and IOSCO will assess whether the implemented reforms have sufficiently addressed financial stability risks.

(c) *Statement on online harm*

On 15 December 2023, IOSCO issued a [statement on online harm](#), warning retail investors of the risks involved and calling on regulators to respond 'holistically and innovatively', including by working with players in the broader online harm ecosystem.

"Online harm" means financial fraud perpetrated on the internet, primarily targeting retail investors in the securities and derivatives markets, orchestrated using deceptive acts or misleading or fraudulent content to induce the purchase of financial products or services. This can take the form of advertisements, videos, impersonator websites and social media posts, as well as comments or reviews.

IOSCO also asks other relevant stakeholders, including legislators, law enforcement agencies, search engine operators, social media platforms and other intermediaries and facilitators to support global efforts to reduce online harm.

(d) *Speech on asset management in turbulent times: challenges and opportunities*

On 29 November 2023, IOSCO published [remarks](#) delivered to EFAMA entitled 'Asset management in turbulent times: challenges and opportunities'. The remarks examined the following themes:

- *Will turbulent times be an opportunity for the asset managers to show the added value of active asset management?*
- *The need to monitor vulnerabilities of the asset management sector in the field of liquidity and leverage.*

The monitoring of liquidity and leverage risks are at the heart of the actions taken by IOSCO in recent years and should stay a priority for investment managers.

4.11 Sustainable Finance - ESG developments

(a) *ESAs final report on the review of PAI and financial product disclosures in the SFDR (This is a further update to section 3.13(f) of the report covering the second quarter of 2023)*

On 4 December 2023, the ESAs published their [final Report](#) amending the draft RTS to the Delegated Regulation supplementing SFDR. The final report follows the ESA's consultation on the draft RTS issued in April 2023 and its [consumer testing](#) exercise in four member states of the financial product templates.

The ESAs propose adding new social indicators and streamlining the framework for the disclosure of principal adverse impacts of investment decisions on the environment and society. The ESAs are proposing some improvements and simplifications to the pre-contractual and periodic disclosure templates for financial products, contained in Annexes II-V of the SFDR Delegated Regulation, including a new "dashboard" with a simple summary of key information.

The ESAs also suggest new product disclosures regarding "greenhouse gas emissions reduction" targets.

Additionally, the ESAs propose further technical revisions to the SFDR Delegated Regulation:

- improvements to the disclosures on how sustainable investments "Do No Significant Harm" (DNSH) to the environment and society; and
- other technical adjustments concerning, among others, the treatment of derivatives, the calculation of sustainable investments, and provisions for financial products with underlying investment options.

The Commission will study the draft RTS and decide whether to endorse them within three months. The application date for these RTS is unspecified in the draft Delegated Regulation published by the ESAs. The ESAs have noted that these draft RTS would be applied independently of

the [comprehensive assessment](#) of SFDR announced by the Commission in September 2023 and before changes resulting from that assessment would be introduced.

- (b) *ESMA public statement - update on the guidelines on funds' names using ESG or sustainability-related terms (This is a further update to section 3.14(g) of the report covering the first quarter of 2023)*

On 14 December 2023, ESMA published a [public statement](#) providing an update on the status of ESMA's guidelines on ESG and sustainability-related terms in fund names (the "**Guidelines**"), including details on the timing of their publication.

Since the launch of the work on the guidelines, the AIFMD and UCITS Directive (AIFMD II) reviews have progressed. ESMA has decided to postpone the adoption of the Guidelines to ensure that the outcome of the AIFMD II review may be fully considered. In particular two new mandates for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair, or misleading.

The statement highlights that ESMA have agreed the following amendments to the Guidelines compared to the text consulted upon.

- *Threshold for sustainable investments*

ESMA no longer proposes to introduce the 50% threshold in sustainable investments for the use of sustainability-related words in funds' names. ESMA considers it more appropriate that sustainability-related terms in funds' names should be used along the following lines: the fund should:

- (1) apply the 80% minimum proportion of investments used to meet the sustainability characteristics or objectives;
- (2) apply the Paris-aligned Benchmark ("**PAB**") exclusions; and
- (3) invest 'meaningfully' in sustainable investments defined in Article 2(17) SFDR, reflecting the expectation investors may have based on the fund's name.

- *Adaption to transition*

A new category for transition-related terms For "transition"-related terms, ESMA suggests introducing a new category for which in addition to the 80% threshold, Climate Transition Benchmark ("**CTB**") exclusions (those contained in Article 12(1)(a)-(c) of Commission Delegated Regulation (EU) 2020/1818) should be applied. This amendment is designed to not penalise funds with those terms in their names that pursue strategies fostering a path to transition towards a greener economy.

- *Separation of "E" from "S" and "G" terms*

In order to ensure that transition strategies are not unduly impacted, ESMA intends to specify that where environmental terms are used in combination with "transition" terms in the name of a fund, the CTB exclusions should apply. This would not apply for "sustainable" terms, as "sustainable" terms would always give an impression of sustainability irrespective of any other terms used in the name.

- *Impact and transition terms: measurability*

Funds using "transition" or "impact"-related terms in their names should also ensure that investments under the minimum proportion of investments are made with the intention to generate positive,

measurable social or environmental impact alongside a financial return or are on a clear and measurable path to social or environmental transition.

ESMA plans to adopt the Guidelines shortly after the date of entry into force of the legal texts of AIFMD II (which can be expected by the end of Q1 2024) and is publishing this statement to highlight the key content of the guidance that it intends to provide in the forthcoming Guidelines. The Guidelines are expected to be approved and published in Q2 2024, subject to the timing of the publication of the AIFMD II revised text. The Guidelines would apply three months after the date of their publication on the website in all EU official languages.

- Managers of new funds would be expected to comply with the Guidelines in respect of those funds from the date of application of the Guidelines.
- Managers of funds existing before the date of application of the Guidelines should comply with the Guidelines in respect of those funds six months from the application date.

(c) *Responses to Commission consultation on the implementation of the SFDR (This is a further update to section 3.12(a) of the report covering the third quarter of 2023)*

On 15 December 2023, the Central Bank published its [response](#) to the Commission's targeted [consultation](#) on the implementation of the SFDR.

The key areas of feedback on the existing implementation of the SFDR provided in its response are as follows:

- concern as to the use of the current Article 8 and 9 disclosures for labelling purpose;
- the need for clarification of definitions in the SFDR, including "sustainable investment";
- introducing minimum criteria can enhance trust in the disclosures under Article 8 or 9;
- the need to improve the recognition of transition activities under the SFDR; and
- the need for better alignment of the SFDR with other sustainable finance regulations (e.g. Taxonomy, BMR).

On 10 October 2023, the Commission published [opening remarks](#) made by Commissioner McGuinness at its public workshop 'Sustainability Finance Disclosure Regulation - what next?' The agenda of the workshop was to discuss current challenges of the SFDR and possible ways forward for sustainability disclosures in the EU. Panels discussed the impact of SFDR, in particular how to ensure better coherence between the SFDR and other parts of the EU's sustainable finance framework, making more effective disclosures and considering the possible creation of product categories.

The Central Bank is supportive of introducing a small number strong and clear product categories, with associated minimum criteria. The criteria for each category should be clear, specific, measurable and proportionate and should to the maximum extent possible refer to existing sustainable finance legislation.

The Central Bank recommends that existing disclosure rules under SFDR can be retained in parallel to the product categories but there should be consideration of how the disclosure requirements are simplified, as well as considering if any additional disclosures are required to support product categories.

Irish Funds ("IF") have also contributed a comprehensive assessment of the framework which looks at issues such as legal certainty, usability, interaction with other regulation, and considers the

introduction of a labelling regime to tackle greenwashing concerns. IF considers that a labelling regime focused on the type of investment strategy being implemented by the relevant fund is likely to be more understandable for end investors and is more consistent with the approach that was outlined in the FCA's SDR. IF's submission highlights that fundamental to any proposed categorisation system is that it comprises sufficiently clear categories with transparent, objective, qualitative and minimum criteria so that investors (both retail and institutional) can fully understand the proposed categories and their associated concepts and criteria.

On 15 December 2023, the Platform on Sustainable Finance (the "**Platform**") has also published its response in the form of a [briefing paper](#). Key to the Platform's recommendations for the future of SFDR is advocating for the introduction of a common categorisation scheme to address the existing fragmentation and confusion in the European market.

The consultation closed to feedback on 15 December 2023 and the Commission intends to adopt a report on the functioning of the SFDR by Q2 2024.

(d) *Taxonomy delegated acts published in OJ (This is a further update to section 3.13(c) of the report covering the second quarter of 2023)*

On 20 November 2023, the following Taxonomy delegated acts which had been proposed in the Commission's June 2023 sustainable finance package were published in the OJ:

- [Commission Delegated Regulation \(EU\) 2023/2485](#) with targeted amendments to the EU Taxonomy Climate Delegated Act, which expands on the economic activities contributing to climate change mitigation and adaptation not previously included. It will apply from 1 January 2024 with the exception of point (28) of Annex I and point (26) of Annex II shall apply from 1 January 2025.
- [Commission Delegated Regulation \(EU\) 2023/2486](#) introducing technical screening criteria for the non-climate environmental objectives in the EU Taxonomy Regulation. It applies from 1 January 2024.

(e) *Draft Commission notice on Disclosures Delegated Act under the Taxonomy*

On 21 December 2023, the Commission published a [draft Commission notice](#) (its third in all) that sets out additional guidance responding to frequently asked questions on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act ((EU) 2021/2178) made under Article 8 of the Taxonomy on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets.

The guidance is intended to help the financial market participants concerned prepare their first mandatory reporting exercise in 2024, including:

- the reporting obligations of large financial undertakings and financial undertakings admitted to trading on EU markets relating to how they finance, invest in or insure taxonomy-aligned activities.
- clarifying the scope of entities subject to the reporting obligations, the taxonomy assessment of specific exposures such as to retail clients, local authorities and exposures to individual undertakings and groups.
- considering the rules regarding the verification and evidence of compliance with the EU taxonomy, and targeted questions specifically related to asset managers, credit institutions and insurance undertakings.

The draft notice states was approved in principle by the Commission on 21 December 2023 and its formal adoption in all the official languages of the EU will take place as soon as the language versions are available.

- (f) *Publication in the OJ of Taxonomy notices (This is a further update to section 4.15(h) of the quarterly report covering the fourth quarter of 2022)*

On 20 October 2023, the following Commission notices on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act and the Disclosures Delegated Act under Article 8 of the Taxonomy were published in the OJ:

- [Commission Notice C/2023/267](#) on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objective; and
- [Commission Notice C/2023/305](#) on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of Taxonomy on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets (second Commission Notice)

A footnote to the first Notice clarifies that the FAQs do not take into account proposed amendments to the Taxonomy Climate Delegated Act, which were published by the Commission in June 2023. The second Notice explains that the Commission may update or add to FAQs relating to non-financial undertakings reporting KPIs and financial undertakings reporting on their green asset ratio (GAR) and green investment ratio (GIR).

- (g) *ESMA explanatory notes - key sustainable finance topics*

On 22 November 2023, ESMA published three explanatory notes addressing key topics under the EU's Sustainable Finance ("SF") framework. The three ESMA notes set out factual information regarding these concepts and they arguably constitute the most notable contributions to the SF landscape since the Commission [responded](#) in April 2023 with key clarifications to questions on sustainable investments.

The explanatory notes are a significant aide to these concepts assisting stakeholders to navigate and better understand the SF legislative framework. ESMA highlights these notes are a purely descriptive presentation of the relevant legal provisions in EU Directives, Regulations and Commission Delegated Regulations as well as the relevant guidance provided by the Commission and the ESAs and are not intended to replace relevant legal texts nor to provide guidance on the application of relevant provisions.

These explanatory notes, do however effectively summarise the piecemeal guidance from 2021, 2022 and 2023 from the Commission and the ESAs and provide web-links to all the relevant sources. They can be viewed as a very useful aide memoire for practitioners on the available guidance on SF, as reading these documents alone will provide a comprehensive picture of the various requirements under the SF framework as it currently stands.

- a) [Concepts of sustainable investments and environmentally sustainable activities in the EU Sustainable Finance framework](#)

This explanatory note explains how the concept of sustainability is inscribed in the EU sustainable finance framework. The concept of sustainability is reflected in the definition of "sustainable investments" in SFDR and the definition of "environmentally sustainable economic activities" introduced under the Taxonomy.

In respect of the Taxonomy, the explanatory note is particularly useful as it clearly sets out the criteria for determining if an economic activity is Taxonomy-aligned and whether it is 'transitional' or 'enabling'.

The explanatory note sets out the clarification from the ESAs that it is possible for financial market participants ("FMPs") to define their own contribution criteria for socially sustainable investments and create their own framework for their sustainable investments under SFDR as long as they adhere to the minimum criteria of contribution, 'do no significant harm' ("DNSH") and good governance. The explanatory note highlights that FMPs should not interpret this differently for different financial products they make available and apply different interpretations of "sustainable investments" to different financial products they offer.

The explanatory note also includes a table which provides a comparative overview of the concepts of sustainable investments under SFDR and Taxonomy environmentally sustainable activities.

b) ['Do No Significant Harm' definitions and criteria across the EU Sustainable Finance Framework](#)

This explanatory note explains the DNSH principle as embedded in several pieces of EU sustainable finance legislation. The DNSH principle is a key element in the Taxonomy, SFDR and the BMR.

In respect of SFDR, the explanatory note outline the types of disclosures which apply independently namely:

- disclosures on DNSH for financial products that make sustainable investments; and
- PAI disclosures at entity and financial product level for all investments.

The note helpfully outlines which companies should be excluded under the BMR because they operate in sectors that do not have measurable carbon emission reduction targets with specific deadlines that are aligned with the objectives of the Paris Agreement.

The note also includes a table which provides a comparative overview of the key aspects of the DNSH principle under the Taxonomy, SFDR and BMR, including:

- who should apply the DNSH principle and in which situations?
- what does the application of the DNSH principle entail?
- does the framework contain specific criteria for the application of the DNSH principle?
- do the DNSH criteria refer to specific targets or thresholds?
- what is the scope of application of the DNSH principle?
- situations where the DNSH criteria in the three sectorial legislations (Taxonomy, SFDR, BMR) interact.

Each of (a) and (b) above also contain annexes which include links to the FAQ documents published by the Commission providing guidance on the application of the Taxonomy and guidance from the ESAs and the Commission regarding the SFDR.

c) [Concept of estimates across the EU Sustainable Finance Framework](#)

This explanatory note explains how key EU sustainable finance legislation deals with the use of "estimates" and "equivalent information", and the conditions under which these are permitted as

sources of data to prepare mandatory ESG metrics for the compliance of regulated entities with their obligations. Different pieces of the EU SF framework impose requirements for the calculation and disclosure of various ESG metrics or sustainability.

The note discusses how the Taxonomy recognises the possibility of exceptional situations where stakeholders cannot reasonably obtain the relevant information to reliably determine alignment with the technical screening criteria and examples of same. It also refers to the Commission FAQ which sets out the approach financial undertakings should take if information is not readily or publicly available.

The note also outlines the ESAs acknowledgement of the challenges FMPs face in obtaining data, and their statement that the ESG information chain is developing meaning that both FMPs and regulators may have to rely on limited availability data during the period pending the application of the Corporate Sustainability Reporting Directive (2022/2464/EU).

The note helpfully includes a table which provides a comparative overview of the concepts of equivalent information and estimates under the SF Framework, including the stakeholders applying the concept of estimates / equivalent information and specific requirements for the situations when these concepts can be applied.

(h) *Corporate Sustainability Due Diligence Directive ("CSDDD") update*

On 14 December 2023, the Council of the EU published a [press release](#) to confirm that a provisional agreement has been reached on the CSDDD. The CSDDD will introduce new rules regarding corporate sustainability due diligence setting obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners.

Financial Sector Application

According to the deal negotiated, the financial sector will be temporarily excluded from the scope of the directive, but there will be a review clause for a possible future inclusion of this sector based on a sufficient impact assessment.

The CSDDD remains to be formally adopted. Member states will have two years following adoption of the CSDDD to transpose it into national law, with further delays possible depending on the wording of the final text.

(i) *ESMA CSA on ESG disclosures under BMR*

On 13 December 2023, ESMA published a [press release](#) announcing that it will launch and carry out a CSA with NCAs on ESG disclosures under BMR. The CSA will focus on supervised benchmark administrators, located either in the EU or in a third country, that have acquired an authorisation, registration, recognition or endorsement of their benchmarks under the BMR. The CSA's goal will be to assess the extent to which supervised benchmark administrators are complying with the ESG disclosure requirements in the BMR. It will cover the following aspects:

- disclosure of ESG factors in the benchmarks statement and in the benchmarks methodology; and
- specific disclosure requirements regarding climate benchmarks methodology.

ESMA believes this initiative, and the related sharing of practices across the NCAs, will help ensure consistent and effective supervision of the ESG disclosures of supervised administrators across the EU and enhance the comparability of the information provided to users of benchmarks. The CSA will contribute to enhancing transparency and addressing greenwashing.

ESMA and the NCAs will carry out the CSA during 2024 and until Q1 2025. As part of the CSA, ESMA and the NCAs will share knowledge and experiences to foster convergence in how they supervise ESG disclosure requirements for benchmark administrators.

In conjunction, ESMA published its 2022 [sanctions report](#) under the BMR showing one administrative sanction and one administrative measure were imposed by two NCAs on respectively a supervised entity (user of benchmarks) (based in Luxembourg) and a supervised contributor (based in Germany).

(j) *Report on Taxonomy-aligning benchmarks*

On 13 December 2023, the Platform published its [draft report](#) and call for feedback on proposals to introduce two EU taxonomy-aligning benchmarks ("TABS") without and with exclusions (EU TAB and EU TABex).

The Platform states that it aims to start a discussion on the pivotal role the EU taxonomy could play in shaping climate and environmental benchmarks and the proposed EU TABs would provide investors with an appropriate tool to align the taxonomy with their investment strategy. The proposed TABs are inspired by the success of the PABs.

EU TABs are defined as benchmarks where the underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a scaling environmentally sustainable capital expenditure (CapEx) trajectory, while the non-environmentally sustainable CapEx proportion is on a decarbonisation trajectory. EU TABex also include specific activity exclusion thresholds for fossil fuel-related activities.

The call for feedback is open until 13 March 2024.

(k) *ESA sustainable finance education factsheet*

ESMA, in collaboration with the other ESAs have also recently published the attached financial education sustainable finance [factsheet](#) which you may find of interest. It offer tips that answers consumers' FAQs on assessing financial products with sustainability features, including investments.

Consumers are encouraged to:

- decide how important sustainability is for them and what financial goals they want to achieve before they choose a product;
- pay attention to the conditions and the sustainability features, to avoid being misled by 'greenwashing';
- keep in mind that financial products with sustainability features are not risk-free; and
- for investments and life insurance policies, take their time before deciding and, if need be, seek further clarification from the firm or person that can advise them on and sell them such products.

The ESAs will work with the NCAs to promote the use of the factsheet across the EU.

(l) *European green bond standard (This is a further update to section 3.14(f) of the report covering the first quarter of 2023)*

On 22 November 2023, following its adoption by EU legislators [Regulation \(EU\) 2023/2631](#) on European green bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (the "**Regulation**") was published in the OJ.

The Regulation which establishes a voluntary standard for bonds aimed at financing sustainable investment will be directly effective in member states from 21 December 2024 with certain provisions benefiting from a transitional period. The Regulation provides for further Level 2 and Level 3 mandates.

(m) *UK sustainability disclosure requirements*

On 28 November 2023, the FCA published a [policy statement](#) (PS23/16) confirming its final [sustainability disclosure requirements \("SDR"\) and investment labels](#).

The FCA policy statement specifies that the SDR regime applies to UK funds, and overseas funds are not in scope. Any extension of SDR to overseas funds is a matter for the Treasury, so the decision on such an extension will most likely come in the form of an overseas fund regime equivalence decision.

The SDR introduces a requirement on distributors to ensure a notice is placed on overseas fund products by 2 December 2024 to clarify for consumers where they are not subject to the UK sustainable investment labelling and disclosure requirements. This must be in a prominent place on the relevant digital medium, along with a hyperlink to the relevant FCA webpage setting out further information on the regime for retail consumers, or otherwise communicated via the distributor's usual channel of communication.

The policy statement notes that SDR and SFDR are compatible and that firms should be able to use much of the information they use for SFDR to meet the qualifying criteria and disclosure requirements of the UK regime. Annex 3 of the policy statement includes a mapping chart against the proposed SFDR consultation categories as well as a summary of the SDR qualifying criteria and the relevant information under SFDR that firms may leverage to support meeting the SDR requirement.

(n) *Euronext publishes ESG company profiles*

On 13 November 2023, Euronext [launched](#) its 'My ESG Profile', a new online tool displayed on Euronext Live showcasing listed companies' sustainability efforts and facilitating investors' access to ESG data. The objective of the My ESG Profile is to support the transition to a sustainable economy, by providing ESG profiles on certain listed companies with a digital tool that they can use to centralise relevant ESG information, showcasing to the market the sustainability efforts, while facilitating investors' access to this key data to inform their sustainable investment decisions.

Euronext has become the first stock exchange to make the ESG data of its issuers available in a standardised format on its website.

(o) *Central Bank publications (climate finance week)*

On 20 November 2023, ahead of climate finance week, the Central Bank [published](#) the following publications containing new data and insights:

- its first annual [Climate Observatory report](#), with updates on climate-aligned financial metrics using a combination of internal and external data sources. This publication offers, amongst other data, insights into climate risks for banks, insurers and funds, as well as data to describe national decarbonisation challenges and progress.
- [Behind the Data](#), "Surveying the Green Lending Landscape to Households and Non-Financial Corporations", shows that the level of green loans in Ireland has increased in recent years, as has

the diversity of the types of loans offered. The research also notes evidence of Irish households benefitting from lower interest rates when drawing down these types of credit.

- [Behind the Data](#), “Understanding the Carbon Intensity of Ireland’s Financial Sector’s Securities Holdings”, looks at the carbon intensity of security holdings in Ireland, and shows that though results are comparable to other euro area economies, there are concentrated exposures in Irish banks.

(p) *ECB-ESRB joint-report on the impact of climate change on the EU financial system*

On 18 December 2023, the European Central Bank (ECB) and the European Systemic Risk Board (ESRB) published a [joint report](#) on the impact of climate change on the EU financial system. The joint-report sets out detailed frameworks for addressing risk by gathering evidence on the most important financial stability indicators via a surveillance framework; leveraging this evidence to develop a macroprudential strategy for addressing climate risk; and extending the scope from climate-related risks to broader nature-related risks.

(q) *ESMA speech on the state of play in financial reporting*

On 28 November 2023 ESMA published a keynote [speech](#) delivered by Verena Ross ESMA Chair entitled “State of play in financial reporting” some of the key factors that may facilitate cross-fertilisation between financial and sustainability reporting and improve connectivity.

(r) *Central Bank publishes notice of intention on recognition of sustainability knowledge and competence in the minimum competency code 2017 (the “MCC”)*

On 23 November 2023, the Central Bank issued a [Notice of Intention](#) on recognition of sustainability knowledge and competence in the MCC. The MCC establishes minimum professional standards for persons providing certain financial services, in particular when dealing with consumers.

The Central Bank also intends to recognise sustainability training for continuing professional development hours, where it is directly relevant to a person’s role. These changes are being introduced by the Central Bank pursuant to the powers set out in section 50 of the Central Bank Reform Act 2010.

(s) *TRV Risk Analysis: ESG names and claims in the EU fund industry*

On 2 October 2023, ESMA published [an article](#) exploring the use of language related to ESG factors in EU investment fund names and documentation. This article contributes to ESMA’s on-going and scaling-up of monitoring efforts in the area of greenwashing risks, in particular in the investment management sector, and intends to support on-going regulatory efforts regarding ESG disclosure requirements for investment funds.

ESMA examine the use of ESG-related language in over 100,000 fund documents. Their study notes that the share of EU UCITS investment funds with ESG words in their name has increased from less than 3% in 2013 to 14%

The results also point to differences between the document types (regulatory document vs. marketing material), suggesting that fund managers adapt their communication based on the expected types of readers. While only 23% of examined funds’ investment strategies contain at least one ESG word, this percentage increases to 80% for KIIDs/KIDs and even to 90% for marketing documents. The study notes that funds that target retail investors are appearing to make additional ESG claims in the KID/KIID documents created specifically to enhance retail investors’ understanding of the fund. These same funds, however, do not make particular efforts (relative to institutional funds) in documents that are not standardised and regulated (e.g. marketing materials) which highlights to ESMA the importance of ensuring consistency and improving investor protection across different types of documentation.

ESMA organised a [public webinar](#) and Q&A on the article and its findings.

Walkers have published a recent [advisory](#) on ESMA's analysis and on-going regulatory efforts regarding ESG disclosure requirements for investment funds.

(t) *TRV Risk Analysis: European sustainable debt market – ESG pricing effect*

On 6 October 2023, ESMA published [an article](#) on the European sustainable debt market, analysing the existence of an ESG pricing effect across different types of sustainable-labelled debt instruments. ESMA noted issuers of ESG bonds did benefit from a statistically significant pricing in the past driven by their issuer-level ESG credentials.

(u) *IOSCO final report on supervisory practices to address greenwashing*

On 4 December 2023, IOSCO published its [Final report](#) on supervisory practices to address greenwashing.

The report provides an overview of the initiatives undertaken to address greenwashing following IOSCO publishing recommendations in November 2021 and a [call for action](#) in November 2022. The report presents the challenges hindering the implementation of these recommendations, including

- data gaps,
- transparency, quality and reliability of ESG ratings,
- consistency in labelling and classification of sustainability-related products,
- evolving regulatory approaches, and
- capacity building needs.

IOSCO specifically highlights:

- There is no global definition of greenwashing, but many regulators have provided guidance on the identification of greenwashing and the risks associated with it. Many jurisdictions have in place supervisory tools and mechanisms to address greenwashing relating to asset managers and their products.
- The market for ESG ratings and data products is in a phase of rapid growth. A few jurisdictions are currently developing mandatory or voluntary policy frameworks for ESG ratings and data products providers.

Section 4 highlights a number of supervisory measures, technological tools used by supervisors as well as certain enforcement measures which have been applied to greenwashing cases, for example, infringement notices, monetary fines, licence revocation, suspension of business, public reprimands and potential civil or criminal liability. IOSCO concludes that greenwashing will remain a high risk to the reputation of global sustainable finance markets until the quality and reliability of information available to investors improves.

(v) *IOSCO consultation report on voluntary carbon markets ("VCMs")*

On 3 December 2023, IOSCO published its [Consultation report](#) on VCMs. The consultation contains information about the feedback IOSCO received to its November 2022 discussion paper on VCMs. VCMs are markets where entities buy carbon credits for voluntary use (for example, to offset carbon emissions and support a claim about their climate performance, or otherwise finance mitigation activities with traceable results) rather than to comply with an obligation

Respondents called for co-ordination between initiatives aimed at improving the functioning of VCMs and expressed mixed views about the legal treatment of carbon credits (as well as the use of distributed ledger technology (DLT) and tokenisation in connection with VCMs).

IOSCO sets out a proposed set of good practices in the consultation. The good practices are addressed to regulators and other authorities, as well as market participants and looks to support jurisdictions that have or are seeking to establish VCMs. They relate to regulatory frameworks, primary market issuance, secondary market trading, and the use and disclosure of use of carbon credits.

The consultation closes to comments on 3 March 2024.

(w) *Common supervisory action on MiFID II sustainability requirements (This is a further update to section 3.5(c) of the quarterly report covering the third quarter of 2023)*

On 3 October 2023, ESMA published a [press release](#) to announce it will launch a CSA with NCAs on the integration of sustainability in firms' suitability assessment and product governance processes and procedures in 2024. The aim of the CSA is to assess the progress made by intermediaries in the application of the key sustainability requirements, which entered into application in 2022 following the amendments to the MiFID II delegated acts. The CSA follows ESMA's recent update of two sets of guidelines on suitability and product governance, both of which entered into application last week and will apply to FMCs in the provision of the top-up activities.

ESMA explains that the CSA will cover how firms:

- collect information on their clients' sustainability preferences;
- ensure the suitability of an investment with respect to sustainability (including the use of a portfolio approach); and
- specify any sustainability-related objectives a product is compatible with as part of the target market assessment of the investment product.

The CSA will also cover the arrangements that firms have put in place to understand and correctly categorise investment products with sustainability factors for the purpose of the suitability assessment.

(x) *Draft guidelines on enforcement of sustainability information*

On 15 December 2023, ESMA published a [consultation](#) on draft guidelines on enforcement of sustainability information, pursuant to CSRD.

ESMA states that the main goals of the draft guidelines are to:

- ensure that NCAs carry out their supervision of listed companies' sustainability information under the CSRD, the European Sustainability Reporting Standards and Article 8 of the Taxonomy in a converged manner; and
- establish consistency in, and equally robust approaches to, the supervision of listed companies' sustainability and financial information. This will facilitate increased connectivity between the two types of reporting.

In preparing the guidelines, ESMA has aimed to align them as closely as possible with the ESMA [guidelines](#) on enforcement of financial information. The deadline for responding to the consultation is 15 March 2024. ESMA expects to publish the final guidelines in Q3 of 2024.

These draft enforcement guidelines follows a number of ESMA publications issued on 25 October 2023 (*referred to below*) focusing on the sustainability disclosures practices of corporate issuers in financial reporting.

(y) *ESMA public statement on the European common enforcement priorities for 2023 annual financial reports*

On 25 October 2023, ESMA published a [public statement](#) on the European common enforcement priorities for 2023 annual financial reports (as defined by Article 4 of the Transparency Directive 2004/109/EC) of issuers admitted to trading on European Economic Area (EEA) regulated markets. The common enforcement priorities related to sustainability reporting of such issuers include:

- preparations for the entry into force of the CSRD; and
- the Commission's recommendation on transition finance.

Special focus will be placed on the following:

- impact of climate matters in IFRS financial statements;
- macroeconomic environment;
- refinancing and other financial risks;
- fair-value measurement and disclosures;
- disclosures relating to Article 8 (Transparency of undertakings in non-financial statements) of the Taxonomy;
- disclosures of climate-related targets, actions and progress; and
- scope 3 emissions.

(z) *ESMA report on disclosures of climate-related matters in financial statements*

On 25 October 2023, ESMA published a [report](#) on disclosures of climate-related matters in financial statements entitled 'The Heat is On: Disclosures of Climate-Related Matters in the Financial Statements'.

This report aims to assist and to enhance the ability of issuers to provide more robust disclosures and create more consistency in how climate-related matters are accounted for in financial statements drawn up in accordance with International Financial Reporting Standards ("IFRS"). The report focuses on disclosures related to climate matters included in the 2022 annual financial statements of European non-financial corporate issuers whose securities are admitted to trading on EEA regulated markets.

ESMA compiled information from national enforcers and notes that it understands that assessing how climate-related matters impact financial reporting can be a challenge for issuers, auditors and users, particularly when these impacts are indirect or relate to sectors that do not appear to be immediately exposed. ESMA believes that real-life illustrations of disclosures (rather than relying solely on IFRS) may help issuers to better communicate these impacts and investors and other stakeholders to better understand them.

ESMA points out that the report does not set out best practices or prescribe the way in which the disclosure of climate-related matters should be made in the financial statements.

ESMA expects issuers (including their management, supervisory boards and audit committees) and auditors to consider the illustrative examples of this report when considering how to assess and disclose the degree to which climate-related matters play a role into the preparation and auditing of IFRS financial statements. ESMA encourages issuers to consider the observations in the areas for

continued focus that accompany the disclosure excerpts presented in this report, and not to concentrate excessively on the facts and circumstances presented by the examples (which are highly specific to the entities).

Finally, ESMA stresses that the guidance addressing climate impacts is not exhaustive and is developing at a fast pace so issuers should closely follow the developments of standard setters in this area.

(aa) *ESMA results of a fact-finding exercise on corporate reporting practices under the Taxonomy*

On 25 October 2023, ESMA published a [report](#) on a fact-finding exercise it has conducted on corporate reporting practices (based on non-financial statements published by European non-financial undertakings listed in regulated markets) under the Taxonomy.

The Taxonomy (Article 8) requires undertakings subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of the Accounting Directive to include in their non-financial statements or consolidated non-financial statements information on how, and to what extent, their activities are associated with economic activities that qualify as environmentally sustainable. The Disclosures Delegated Act (Delegated Regulation (EU) 2021/2178) specifies the information to be disclosed as well as the timing for the disclosure. The focus of this fact-finding exercise was to evaluate the quality of the disclosures with which issuers have responded to the new requirements.

Key findings include

- Almost all issuers, selected by the national enforcers as being active in four main sectors covered by the Taxonomy Climate Delegated Act ((EU) 2021/2139), disclosed the required taxonomy alignment key performance indicators ("KPIs").
- The mandatory reporting templates have generally been used, but for 30% of the sample they were either modified or not fully completed, which may affect comparability and make access to the data more difficult for users.
- At least some of the mandatory qualitative information relating to issuers' assessment of their compliance with transparency requirements in relation to the nature of their activities, the technical screening criteria, the Do No Significant Harm criteria, and the minimum safeguards was missing or insufficient for more than 40% of those assessed.
- Further areas of incorrect application included transparency on the avoidance of double counting, the screening of activities against one climate objective only or the reconciliation with financial reporting.

Good reporting practices were also encountered, such as detailed explanations on the nature of activities or compliance tests, as well as links to the corporate sustainability strategy.

(bb) *Opening remarks by Commissioner McGuinness at the European Parliament plenary debate on the European green bond standard (This is a further update to section 4.14(f) of the quarterly report covering the first quarter of 2023)*

On 4 October 2023, the Commissioner McGuinness delivered [opening remarks](#) at the European Parliament plenary debate on the European Green Bond Standard. The [EU Parliament](#) and subsequently the [EU Council](#) have since adopted the [regulation](#) on European green bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (the "**Regulation**"). The Regulation lays down a new voluntary standard (the "**European Green Bond Standard**") (referred to in section 4.14(l) of this report) for issuers who wish to use the

designation 'European green bond' or 'EuGB' for the marketing of their bond. All issuers choosing to adapt the standards will be required to disclose considerable information about how the bond's proceeds will be used and how these investments feed into the issuer's transition plans. A registration system and supervisory framework will be created for external reviewers of the bonds, the independent entities responsible for assessing compliance with the standards. Until the EU's taxonomy framework is in operation, issuers of such bond must ensure that at least 85% of the funds raised are allocated to economic activities that align with the Taxonomy while the other 15% can be allocated to other economic activities provided the issuer complies with the requirements to clearly explain where it allocates the investment.

The Regulation will become directly applicable 12 months after publication in the OJ. The Commission and ESMA have to put in place technical measures to make sure that the standard functions effectively in practice. The Commission will also prepare user-friendly disclosure templates to be used by all issuers of green bonds, whether they use the European Green Bond Standard or not, as well as sustainability-linked bonds.

(cc) *Platform and the Commission launch the Taxonomy stakeholder request mechanism*

On 17 October 2023, the Commission published a [press release](#) in respect of the launch by the Platform on Sustainable Finance of an EU taxonomy stakeholder [request mechanism](#) and a [questionnaire](#) relating to the Taxonomy.

The article explains the stakeholder request mechanism allows stakeholders to submit suggestions based on scientific or technical evidence about new economic activities that could be added to the Taxonomy or that could lead to revisions of technical screening criteria (TSC) of existing activities.

(dd) *Decision to delay sector-specific European Sustainability Reporting Standards ("ESRS") (This is a further update to section 3.12(f) of the quarterly report covering the third quarter of 2023)*

On 24 October 2023, the Commission published a draft [decision](#) proposing to delay adoption of the second tranche of ESRS (including sector specific and non-EU) which were originally to be adopted by 30 June 2024 until June 2026.

Companies within scope of the CSRD will need to report information on a broad range of ESG issues relevant to their businesses in compliance with ESR, which are to be adopted by the Commission in the form of delegated acts. The first set of ESRS was adopted in its final form on 31 July 2023, and is due to be published in the OJ in Q4 2023.

Public feedback on this proposal is open until 19 December 2023.

(ee) *Amendment to accounting directive to adjust corporate thresholds for inflation published in OJ (This is a further update to section 3.12(c) of the quarterly report covering the third quarter of 2023)*

On 21 December 2023, the Commission [delegated directive](#) (EU) 2023/2775 which amends the Accounting Directive ((EU) 2013/34) to adjust the monetary criteria (balance sheet and net turnover) for micro, small, medium-sized and large companies by 25% to account for inflation was published in the OJ.

The delegated directive will result in a reduced number of companies subject to sustainability reporting under the CSRD and the Taxonomy.

The delegated directive will enter into force on the third day following publication. Member states must bring into force laws, regulations and administrative provisions necessary to comply with the directive by 24 December 2024.

(ff) *First set of ESRS published in the OJ*

On 22 December 2023, [Commission Delegated Regulation \(EU\) 2023/2772](#) was published in the OJ. The Delegated Regulation sets out the first set of ESRS under CSRD. It applies from 1 January 2024 for financial years beginning on or after 1 January 2024.

(gg) *Financial Stability Board ("FSB") report on climate disclosures*

On 12 October 2023, the FSB published its [2023 progress report](#) on climate-related disclosures. The report considers the progress made since the publication of the FSB's 2022 progress report on the same issue.

- Since October 2022, significant further progress has been achieved on setting comparable, consistent, and decision-useful climate-related financial disclosure standards and requirements.
- The International Sustainability Standards Board ("ISSB") standards will serve as a global framework for sustainability disclosures and, when implemented, will enable disclosures by different companies around the world to be made on a common basis. The ISSB's publication, in June 2023, of its inaugural sustainability-related disclosure standards (that is, IFRS S1 and IFRS S2) represents a milestone achievement
- Authorities in several jurisdictions have already indicated that they aim to adopt or endorse the ISSB's standards. Several FSB member jurisdictions have highlighted the interoperability challenge, with potential gaps between the standards and individual jurisdictions' climate-related disclosure frameworks, including inconsistencies of definitions and terminology used. Progress continues to be made on improvements in this area. In particular, the ISSB and the EU have been working jointly to improve the interoperability of their respective requirements in the overlapping climate disclosure standards.
- There is encouraging progress on developing a global assurance, ethics and independence framework for sustainability disclosures.
- All FSB jurisdictions either have requirements, guidance or expectations in respect of climate-related disclosures currently in place, or have taken steps to do so.
- The report also highlights the findings set out in the [2023 status report](#), which was separately published by the FSB's industry-led Task Force on Climate-related Financial Disclosures (TCFD)

The FSB has delivered the report to the G20 Finance Ministers and Central Bank Governors ahead of their meeting on 11 October 2023.