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Funds

Quarterly Legal and Regulatory Update

Period covered: 1 October 2023 – 31 December 2023

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1. APPROACHING DEADLINES [1] [2]

Approaching deadlines		
Q1 2024	1 January 2024	Revised and additional delegated acts under the Taxonomy Regulation begin to apply.
	10 January 2024	The revised ELTIF Regulation begins to apply. See Section 8 **below** for further information.
	18 January 2024	Deadline for submission of responses to the Central Bank of Ireland (**Central Bank**)'s consultation paper on macroprudential measures for GBP liability-driven investment funds. See Section 3.4 **below** for further information.
	31 January 2024	Deadline for all Irish UCITS management companies and AIFMs to file annual confirmation of ownership with the Central Bank.
	8 February 2024	Deadline for submission of responses to the Central Bank's consultation paper on its approach to innovation engagement in financial services. See Section 3.6 **below** for further information.
	9 February 2024	Deadline for submission of response to the Central Bank's survey on delegation by Irish fund management companies.
	12 February 2024	Deadline for submission of responses to the UK FCA's consultation on its overseas fund regime. For further information, see our **briefing** on the topic.
	20 February 2024	All UCITS which continue to prepare a UCITS KIID must file updated KIIDS which contain updated performance data for the period ended 31 December 2023 and which incorporate any other required revisions with the Central Bank no later than 20 February 2024.
	29 February 2024	Deadline for filing the annual PCF/CF confirmation for both Irish authorised UCITS management companies/AIFMS and Irish authorised investment funds with the Central Bank.
	29 February 2024	Deadline for submission by Irish fund management companies of annual CBI fund profile return for each fund/ sub-fund under management
	29 April 2024	The new EMIR Refit reporting regime comes into effect. See Section 10.4 **below** for further information.
	27 May 2024	All Irish fund management companies with additional individual portfolio management permissions authorised by the Central Bank on or before 27 November 2023 should ensure that they take all necessary steps to comply with the new "own funds" framework introduced by the Central Bank by 27 May 2024. See Section 3.2 **below** for further information.

[1] The "Approaching Deadlines" section does not include filing requirements in respect of any filing where the filing date is determined with reference to the relevant entity's annual accounting date (such as the filing of annual and semi-annual financial statements with the Central Bank) nor does it address any tax-related deadlines to which funds and fund management companies may be subject. Periodic reviews of matters such as the risk management framework, business plan and policies and procedures of fund management companies as well as any other actions required to be taken under the Irish Funds Corporate Governance Code are also excluded from the remit of this section as the dates for completion of same are determined by the relevant fund management company/fund rather than being set down in relevant legislation or guidance.

[2] To the extent that they have not already done so, funds falling within the scope of Article 8 or Article 9 of the SFDR must file updated pre-contractual annexes contained in Commission Delegated Regulation 2023/363 which contain additional disclosure obligations relating to exposure to Taxonomy-aligned fossil gas and nuclear energy economic activities with the Central Bank "as soon as possible and at the earliest opportunity".

	28 May 2024	All Irish fund management companies authorised on or before 27 November 2023 must use the revised minimum capital requirement report published by the Central Bank on 27 November 2023 from this date. See Section 3.3 **below** for further information.
Q2 2024	28 May 2024	New rules being implemented by the Securities & Exchange Commission in the United States to shorten the standard settlement cycle for most broker-dealer transactions in U.S. securities from two business days after the trade date (T+2) to one business day after the trade date (T+1) take effect. See Section 14.1 **below** for further information.
	30 June 2024	All Irish fund management companies must have completed a review of their asset valuation frameworks in accordance with the Central Bank's Dear Chair Letter by this date. See Section 3.1 **below** for further information.

2. UCITS & AIFMD

2.1 Central Bank clarifies rules relating to the use of wholly-owned subsidiaries or co-investment vehicles by Irish QIAIFs and provision of loans by the QIAIF to such entities

On 27 November 2023, the Central Bank published the 49th edition of its AIFMD Questions and Answers document in which it provided further clarity on the ability of Irish QIAIFS to use wholly-owned subsidiaries or co-investment vehicles (**Revised AIFMD Q&A).**

The Revised AIFMD Q&A includes three new questions (and related answers) which confirm the following:

- A wholly owned subsidiary or company should be considered as being established by the QIAIF where it is being used by the QIAIF for investment purposes, including in circumstances where the wholly owned subsidiary existed prior to the establishment of the QIAIF.
- Any such wholly owned subsidiary or company established with the intention of a QIAIF using it for investment purposes can itself establish or participate in the establishment of another vehicle that is also being used for investment purposes, provided that the Central Bank's rules on subsidiaries as set out in the AIF Rulebook and the Revised AIFMD Q&A are complied with;
- It is possible for a QIAIF to invest through a co-investment vehicle that includes other third party investors and which is not a wholly owned subsidiary of the QIAIF/RIAIF provided that the specific conditions set down in the Revised AIFMD Q&A are complied with.

In a previous edition of the Central Bank's Q&A on AIFMD published on 1 November 2023, the Central Bank confirmed that the provision of a loan by a QIAIF to its wholly owned subsidiary or to a co-investment vehicle in which it has a majority interest does not trigger the application of the Central Bank's QIAIF loan origination rules provided that such lending is ancillary to the QIAIF's predominant investment strategy. It also confirmed the circumstances in which the Central Bank may exempt an Irish investment limited partnership from the provisions of the European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019.

A copy of the Revised AIFMD Q&A is available **here**.

2.2 Amendments to Irish UCITS Regulations and Irish AIFM Regulations

On 12 December 2023, statutory instruments amending (i) the European Union (Undertakings for Collective Investment in Transferable Securities) 2011 as amended (**Irish UCITS Regulations)** and (ii) European Union (Alternative Investment Fund Managers) Regulations 2013 as amended (**Irish AIFM** Regulations) respectively were published on the Irish statute book.

In the case of the Irish UCITS Regulations, the provision relating to the treatment of fund assets in the event of the insolvency of the depositary or a third party sub-custodian located in the EU which is custodying the assets of the UCITS has been revised to rectify a previous inconsistency with the corresponding UCITS directive.

In the case of the Irish AIFM Regulations, the same provision has been revoked in its entirety in order to align with the AIFMD directive.

A copy of the statutory instrument amending the Irish UCITS Regulations is available **here.**

A copy of the statutory instrument amending the Irish AIFM Regulations is available **here**.

3. CENTRAL BANK OF IRELAND

3.1 Central Bank issues Dear Chair letter on asset valuation to Irish fund management companies

On 14 December 2023, the Central Bank issued a "Dear Chair" letter to all Irish fund management companies in which it set out its key findings and observations arising from its common supervisory action it carried out on certain UCITS management companies on asset valuation in 2022.

These include:

- ensuring that the results of liquidity stress testing and scenario analysis are incorporated into the relevant liquidity management framework;
- ensuring that firm-specific valuation policies and procedures are documented and detail the clear allocation of all operational roles and responsibilities involved in the valuation process;
- ensuring that the valuation policies and procedures are subject to review by senior management at least annually; and
- ensuring that a formalised and comprehensive errors procedure is in place to ensure remedial action is taken as and when valuation or NAV calculations occur which should also be reviewed at least annually.

The letter requires all Irish fund management companies to conduct a review of their existing asset valuation frameworks by 30 June 2024 to ensure that such frameworks are fit for purpose and adhere to all relevant legislative requirements, including the expectations of the Central Bank as outlined in its letter.

A copy of the Dear Chair letter is available **here.**

Key Action Points	All Irish fund management companies should conduct a review of their existing asset valuation frameworks by 30 June 2024 to ensure that such frameworks address all applicable legislative requirements and meet the expectations of the Central Bank as outlined in its letter.

3.2 Central Bank finalises own fund requirements for Irish fund management companies authorised to provide discretionary portfolio management services

On 27 November 2023, the Central Bank published its feedback statement on Consultation Paper 152 which sets down its finalised position on "own funds" requirements applicable to Irish fund management companies authorised to provide discretionary portfolio management services to clients (**Management Companies with Additional IPM Permissions).**

Alongside publishing its feedback statement on Consultation Paper 152, the Central Bank has published (i) amendments to the existing CBI UCITS Regulations (**Amending CBI UCITS Regulations)** and (ii) a revised Central Bank AIF Rulebook, both of which now set down the "own funds" requirement applicable to Management Companies with Additional IPM Permissions.

The revised rules confirm that any Management Companies with Additional IPM Permissions which do not meet the criteria of "small and non-interconnected firms" will be required to calculate a Risk to Client K-factor own funds requirement in accordance with the revised rules in order to determine their "own funds requirements".

All Management Companies with Additional IPM Permissions authorised by the Central Bank on or before 27 November 2023 will be required to comply with the revised framework from 27 May 2024. Any in-scope management company authorised by the Central Bank on or after 28 November 2023 must comply with the revised requirements from the date of authorisation.

The Central Bank's Feedback Statement on Consultation Paper 152 is available **here**.

The Amending CBI UCITS Regulations are available **here**

The revised Central Bank AIF Rulebook dated November 2023 is available **here**

Key Action Points	All Management Companies with Additional IPM Permissions authorised by the Central Bank on or before 27 November 2023 should ensure that they take all necessary steps to comply with the applicable "own funds" requirement by 27 May 2024.

3.3 Central Bank updates its minimum capital requirement report for Irish fund management companies and publishes related guidance

On 27 November 2023, the Central Bank published an updated minimum capital requirement report for Irish fund management companies on its website together with revised guidance on its completion.

This revised minimum capital requirement report must be used by all existing Irish management companies authorised by the Central Bank before 28 November 2023 from 27 May 2024 onwards.

It must be used by all Irish management companies authorised by the Central Bank on or after 28 November 2023 from the date of their authorisation by the Central Bank.

A copy of the revised minimum capital requirement report is available **here**.

A copy of the Central Bank's updated guidance on completing the minimum capital requirement report is available **here**.

3.4 Central Bank launches consultation paper on macroprudential measures for GBP liability-driven investment funds

On 23 November 2023, the Central Bank published a consultation paper on macroprudential measures for GBP liability-driven funds.

In it, the Central Bank is consulting on a proposal to codify, and in certain cases, augment the existing yield buffer measure introduced by it via a letter to industry in November 2022 with the intention of strengthening the steady-state resilience of GBP LDI funds. Amongst other proposed measures, the Central Bank is proposing to require Irish authorised GBP denominated LDI funds to maintain resilience to a minimum of 300bps increase in yields.

The Central Bank has confirmed that this consultation is being carried out in alignment with the CSSF in Luxembourg.

The consultation closes on 18 January 2024.

A copy of the consultation paper is available **here**

A copy of the November 2022 industry letter is available **here**

3.5 Central Bank publishes revised regulatory reporting requirements document for Irish AIFMs and Irish UCITS management companies

The Central Bank has revised its regulatory reporting requirements document for both Irish UCITS management companies and Irish AIFMS.

A copy of the Central Bank's revised regulatory reporting requirements document for Irish UCITS management companies is available **here**.

A copy of the Central Bank's revised regulatory reporting requirements document for Irish AIFMs is available **here**

3.6 Central Bank publishes Consultation Paper 156 on its approach to innovation engagement in financial services

On 8 November 2023, the Central Bank of Ireland published consultation paper 156 on its approach to innovation engagement in financial services.

In it, the Central Bank outlines how it engages today on innovation, the enhancements it plans to make to deepen its current model of engagement and its proposals to introduce an Innovation Sandbox.

The consultation closes on 8 February 2024.

A copy of the consultation paper is available **here**

4. SUSTAINABLE FINANCE

4.1 ESAs propose amendments to SFDR Level 2 Measures

On 4 December 2023, the European Supervisory Authorities (**ESAs)** published their final report containing proposed targeted amendments to Commission Delegated Regulation (EU) 2022/1288 which underpins the SFDR (**SFDR Level 2 Measures)**. This followed a consultation process which had been carried out by the ESAs earlier in 2023.

The amendments proposed by the ESAs to the SFDR Level 2 Measures include the following:

- A new dashboard on the front page of the pre-contractual and periodic report annexes for Article 8 funds and Article 9 funds to provide "key information" to investors;
- New disclosures relating to greenhouse gas emission reduction targets in the pre-contractual and periodic report annexes for Article 8 funds and Article 9 funds;
- An obligation to disclose the quantitative thresholds or criteria used to determine that an investment meets the "Do No Significant Harm" prong of the "sustainable investment" test under the SFDR. The ESAs propose that this information be disclosed via the SFDR website disclosures;
- An extension of the social PAI indicators and other changes to the PAI disclosures framework; and
- A harmonised calculation of "sustainable investments".

In order for the ESA's proposed amendments to the SFDR Level 2 Measures to become law, they must now be considered by the European Commission who must decide whether or not to endorse such proposed changes within three months.

A copy of the ESA report containing their proposed amendments to the SFDR Level 2 Measures is available **here**

4.2 ESMA provides update on guidance on fund names using ESG/sustainability related terms

On 14 December 2023, ESMA published a public statement (**Statement)** providing an update on its guidelines on funds names using ESG or sustainability-related terms (**Guidelines)** which it consulted on at the end of 2022.

ESMA had previously indicated that the Guidelines would be finalised and adopted by the end of 2023. However, the Statement confirms that the Guidelines will be adopted after the date of entry into force of the amendments to the UCITS and AIFMD directives.

Based on current estimated timeframes, the Guidelines can expect to be adopted by ESMA in or around April/May 2024 and to apply to new funds from September/October 2024 and to existing funds from December/January 2025.

The Statement also outlines changes which ESMA has incorporated into its Guidelines which will likely impact the following types of funds:

- Funds using the term "sustainable" or a related term in their name which will be required to (i) apply an 80% minimum proportion of investments used to meet the sustainability characteristics or objectives (80% threshold), (ii) apply the exclusion criteria applicable to EU Paris-aligned Benchmarks and (iii) invest meaningfully in "sustainable investments" within the meaning of Article 2(17) of the SFDR;
- Funds using "transition"-related terms in their name which will be required to comply with the 80% Threshold and the exclusion criteria applicable to EU Climate Transition Benchmarks;
- Funds using "environmental"-related terms in their name which will be required to comply with the 80% Threshold and the exclusion criteria applicable to EU Paris-aligned Benchmarks save where the "environmental"-related term is used in tandem with a "transition" related term, in which case the exclusion criteria applicable to EU Climate Transition Benchmarks will apply; and
- Funds using "social" or "governance"-related terms in their name will be required to comply with the 80% Threshold and the exclusion criteria applicable to the EU Climate Transition Benchmarks.

A copy of the Statement is available **here**.

A copy of the original consultation paper is available **here**.

Key Action Points	Once the finalised guidelines have been published by ESMA, Irish funds with ESG/sustainability related terms in their names should assess the likely impact of the ESMA guidelines on the ability to implement the existing investment strategy and consider, where necessary, whether the investment strategy or the name of the fund will be adapted to comply with the finalised guidelines.

4.3 ESMA publishes explanatory notes covering key aspects of the EU sustainable finance framework

On 22 November 2023, ESMA published three explanatory notes covering key aspects of the EU sustainable finance framework as follows:

- Definition of "sustainable investments" and "environmentally sustainable activities"

  This explanatory note provides a comparative overview of the concepts of "sustainable investment" under the SFDR and Taxonomy environmentally sustainable activities (i.e. Taxonomy-aligned activities).

- "Do No Significant Harm" definitions and criteria across the EU Sustainable Finance framework

  This explanatory note is intended to explain the concept of "do no significant harm" (or "DNSH") as it appears in the SFDR, the Taxonomy Regulation and the Benchmark Regulation.

- Concept of estimates across the EU Sustainable Finance framework

  This explanatory note is intended to explain how each of the SFDR, the Taxonomy Regulation and the Benchmark Regulation deal with the use of "estimates" and "equivalent information" and the conditions under which these are allowed as sources of data to prepare mandatory ESG metrics for the compliance of regulated entities such as fund management companies with their obligations under the relevant frameworks.

ESMA notes in each of the explanatory notes that they are intended to assist stakeholders in navigating these concepts and a "purely factual presentation of the relevant legal provisions" in applicable legislation and the guidance issued by the European Commission and the ESAs to date.

A copy of the explanatory note relating to the concepts of "sustainable investment" and "environmentally sustainable activities" is available **here**.

A copy of the explanatory note relating to the concept of "Do No Significant Harm" is available **here.**

A copy of the explanatory note relating to concepts of estimates across the EU Sustainable Finance framework is available **here.**

4.4 CSRD: First set of ESRS reporting standards are published in the Official Journal

On 22 December 2023, the first set of European Sustainability Reporting Standards (ESRS) was published in the Official Journal of the European Union (**Official Journal**).

These common reporting standards must be used by all companies which fall within the scope of the Corporate Sustainability Reporting Directive (CSRD) and take a "double materiality" perspective by requiring such companies to report on the impact of the relevant company on the environment and society as well as the financial risks and opportunities arising from climate change and other sustainability issues. By requiring the use of common standards in the form of the ESRS, it is intended that all in-scope companies report on sustainability matters in a comparable and reliable manner.

This first set of the ESRS are sector agnostic and must be used by all companies falling within the scope of the CRSD, regardless of the specific sector within which they operate. They comprise of the delegated act itself, Annex 1 which contains 12 sector-agnostic reporting standards and Annex 2 which contains acronyms and a glossary of terms used in the ESRS. The first standard, ESRS 1 sets down general principles to be applied when reporting according to ESRS and does not itself contain specific disclosure requirements. ESRS 2 specifies essential information to be disclosed irrespective of which sustainability matter is being considered and is mandatory for all in-scope companies. All of the remaining standards and the individual disclosure requirements and datapoints within them are subject to a materiality assessment. This means that each company will report only relevant information and may omit the information in question that is not relevant (or material) for its business model and activity.

The European Commission has proposed postponing the adoption of sector-specific ESRS for two years until June 2026 with the objective of allowing companies to focus on the implementation of the sector-agnostic ESRS.

The CSRD is being rolled out on a staggered basis on the following basis:

- Companies previously subject to the Non-Financial Reporting Directive (which comprise of large listed companies, large banks and large insurance undertakings – all if they have more than 500 employees), as well as large non-EU listed companies with more than 500 employees: for financial years beginning on or after 1 January 2024, with the first sustainability statement being published in 2025.
- Other large companies, including other large non-EU listed companies: for financial years beginning on or after 1 January 2025, with the first sustainability statement being published in 2026.
- Listed SMEs, including non-EU listed SMEs: for financial years beginning on or after 1 January 2026, with the first sustainability statements being published in 2027[3].

A copy of the first set of the ESRS can be found **here**.

A copy of the CSRD can be found **here**.

A copy of the Q&A published by the European Commission on the ESRS is available **here**

A copy of the European Commission's proposal to delay the adoption of sector-specific ESRS is available **here**

Key Action Points	Irish fund management companies should, if not already completed, carry out a scoping exercise to determine whether or not they fall within the scope of the CSRD and where relevant, the applicable deadline for implementing an appropriate reporting framework to comply with the CSRD and the first set of the ESRS.

4.5 Publication of Taxonomy Delegated Acts in the Official Journal of the European Union and publication of related European Commission guidance

On 21 November 2023, Commission Delegated Regulation (EU) 2023/2486 (**EU Taxonomy Environmental Delegated Act**) and Commission Delegated Regulation (EU) 2023/2485 (**Amending EU Taxonomy Climate Delegated Act**) were published in the Official Journal of the European Union.

The EU Taxonomy Environmental Delegated Act enters into force on 1 January 2024. This regulation sets down the technical screening criteria which must be satisfied in order for an economic activity to be deemed as contributing to the Taxonomy-related environmental objectives of (i) the sustainable use and protection of water and marine resources, (ii) the transition to a circular economy, (iii) to pollution prevention and control and (iv) the protection and restoration of biodiversity and ecosystems.

On the same date, certain provisions of the Amending EU Taxonomy Climate Delegated Act also enter into force. This regulation makes targeted amendments to the existing EU Taxonomy Climate Delegated Acts to expand on the economic activities contributing to climate change mitigation and climate change adaptation not yet covered by the EU Taxonomy framework, in particular the manufacturing and transport sectors.

Separately on 20 October 2023, a Commission Notice containing technical clarifications on the technical screening criteria set out in the existing EU Taxonomy Climate Delegated Act was published in the Official Journal of the European Union (**Commission Notice)**.

A copy of the EU Taxonomy Environmental Delegated Act is available **here**.

A copy of the Amending EU Taxonomy Climate Delegated Act is available **here**.

A copy of the Commission Notice is available **here**

[3] Listed SMEs may decide to opt out of the reporting requirements for a further two years. The last possible date for a listed SME to start reporting is financial year 2028, with first sustainability statement published in 2029.

4.6 European Commission publishes additional guidance on disclosure obligations arising under Article 8 of the Taxonomy Regulation.

Under Article 8 of the Taxonomy Regulation, in-scope companies are required to report information on the Taxonomy-eligible and Taxonomy-aligned economic activities and assets in their annual financial statements in accordance with the specific requirements of Commission Delegated Regulation (EU) 2021/2178 (**Disclosures Delegated Act**).

On 20 October 2023, a Commission Notice which provides guidance to non-financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of key performance indicators under the Disclosures Delegated Act was published in the Official Journal (**Commission Notice for Non-Financial Undertakings**).

On 21 December 2023, the European Commission published a draft Commission notice on the interpretation and implementation of certain provisions of delegated acts published under Article 8 of the Taxonomy Regulation (**Draft Commission Notice for Financial Undertakings**). The purpose of the Draft Commission Notice for Financial Undertakings is to provide specific interpretative and implementation guidance to financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of their key performance indicators under the Disclosures Delegated Act.

A copy of the Commission Notice for Non-Financial Undertakings is available **here.**

A copy of the Draft Commission Notice for Financial Undertakings is available **here**

4.7 European Parliament and Council of Europe begin consideration of proposed regulatory framework for ESG rating providers

In June 2023, the European Commission adopted a legislative proposal setting down a proposed new regulatory framework governing the activities of ESG rating providers operating in the European Union (**ESG Rating Providers Proposal**).

The ESG Rating Providers Proposal is intended to improve the quality of ESG ratings by (i) improving the transparency of ESG ratings, their methodologies and their data sources by imposing specific transparency obligations on ESG rating providers and (ii) ensuring increased integrity of operations of ESG rating providers and the prevention of risks of conflicts of interest at ESG rating providers' level.

The European Commission has proposed that all ESG rating providers which publicly disclose or distribute ESG ratings to regulated financial undertakings in the EU should be authorised and supervised by ESMA.

The ESG Rating Providers Proposal is currently being considered by both the European Parliament and the Council of Europe.

On 8 December 2023, the European Parliament published a report adopted by its Economic and Monetary Affairs Committee which contains ECON's proposed negotiating position and suggested amendments to the ESG Rating Providers Proposal put forward by the European Commission.

The Council of Europe subsequently published a press release on 20 December 2023 confirming that it had also reached an agreement on its negotiating mandate on the ESG Ratings Providers Proposal.

Trialogue negotiations between the European Commission, the European Parliament and the Council of Europe on the ESG Rating Providers Proposal are expected to commence in January 2024.

A copy of the ESG Rating Providers Proposal put forward by the European Commission in June 2023 is available **here**

A copy of the revised legislative text published by the European Parliament is available **here**

A copy of the negotiating mandate published by the Council of Europe is available **here**

4.8 European Parliament and Council of EU reach provisional agreement on proposed Corporate Sustainability Due Diligence Directive

On 14 December 2023, the European Parliament and the Council of Europe announced that they had reached political agreement on the proposed Corporate Sustainability Due Diligence Directive (**CSDDD)**.

The CSDDD will oblige large companies to identify and, where necessary, mitigate the adverse impacts of their activities on human rights (including child labour and the exploitation of workers) and on the environment (including pollution and biodiversity loss) and will apply not only to the relevant company's operations but also those of its subsidiaries and their value chains.

The finalised agreed text has not yet been published. However, the Council of EU suggests in its press release that financial services companies will be "temporarily excluded from the scope of the directive" and notes that a review clause will be included in the CSDDD requiring re-consideration of this position when the legislation is first reviewed post-implementation.

However, the European Parliament's press release indicates that financial services companies meeting the relevant scoping criteria will however be required to adopt a plan ensuring their business model complies with limiting global warming to 1.5°C. In a press conference delivered by the European Parliament on the same date, it suggests that financial institutions will fall within the scope of the CSDDD with regard to their own operations and "upstream" operations

Further clarity on the precise scope of the CSDDD will emerge once the text of the provisional agreement is made available.

The political agreement reached by the European Parliament and the Council of Europe is now subject to formal approval by the co-legislators. Once formally approved, it will be published in the Official Journal and EU member states will have 2 years to transpose the CSDDD into national law.

A copy of the Council of Europe's press release from 14 December 2023 is available **here**

A copy of the European Parliament's press release from the same date is available **here**

The European Parliament's press conference is available for viewing **here.**

4.9 ESMA publishes articles on methodology for climate risk stress testing and analysis of financial impact of greenwashing controversies

On 19 December 2023, ESMA published an article which presents a methodological approach to modelling climate-related shocks in the funds sector.

On the same date, it also published an article highlighting how data on ESG controversies can be used to monitor potential reputational risks around greenwashing.

A copy of both articles are available **here**.

4.10 ESMA announces common supervisory action on ESG disclosures under the Benchmarks Regulation

On 13 December 2023, ESMA published a press release confirming that it will carry out a common supervisory action with national competent authorities on ESG disclosures under the Benchmarks Regulation[4].

The purpose of this common supervisory action is to assess the extent to which benchmark administrators providing Paris-aligned benchmarks or climate-transition benchmarks are complying with the ESG disclosure requirements under the Benchmarks Regulation.

The common supervisory action will be carried out during 2024 until Quarter 1 2025.

A copy of the ESMA press release is available **here**.

5. CENTRAL BANK INDIVIDUAL ACCOUNTABLITY FRAMEWORK AND FITNESS & PROBITY REGIME

5.1 Central Bank publishes finalised implementing regulations and guidance on its Individual Accountability Framework

On 16 November 2023, the Central Bank published:

- Finalised guidance on its Individual Accountability Framework;
- Finalised draft regulations which are required to implement (i) the changes to its Fitness & Probity (F&P regime) certification regime
- the senior executive accountability regulation (SEAR) and the extension of the F&P regime to in-scope holding companies5; and
- Feedback statement on Consultation Paper 153 which issued in March 2023 and which provided industry stakeholders with the opportunity to provide feedback on the Central Bank's proposed approach to implementing its Individual Accountability Framework.

The Central Bank confirmed that the individual conduct standards will apply in full to all individuals performing PCF and CF roles in Irish regulated firms from 29 December 2023.

The Central Bank confirmed that for those firms falling within the scope of SEAR, independent non-executive directors (INEDs) and non-executive directors (NEDs) will not be required to comply with SEAR until 1 July 2025 (a one-year delay). For the avoidance of doubt, this will not be relevant for fund management company/externally managed funds as SEAR will not apply in any event to these entities.

The Central Bank also confirmed that the extension of the F&P regime to in-scope holding companies includes the introduction of two new PCF roles namely HCPCF1 being the office of the chair of the holding company and HCPCF2 being the office of director of the holding company. The relevant regulations also create two CF roles, namely HCCF1 (being those persons who can exercise a significant influence on the conduct of the affairs of the holding company) and HCCF2 (being those persons who are involved in ensuring, controlling or monitoring compliance by a holding company with its relevant obligations.

- A more detailed overview of the finalised IAF regime is contained in provided in our briefing on the topic which is available **here**.
- A copy of the finalised regulations introducing the new certification regime under the Central Bank's fitness and probity regime is available **here**
- A copy of the finalised regulations which extend the F&P regime to certain Irish holding companies is available **here**
- Further information on the PCF and CF roles within in-scope holding companies is available **here**

[4] Regulation (EU) 2016/1011 as amended
[5] These comprise holding companies established in the State of credit institutions, insurance undertakings and investment firms.

- A copy of the draft finalised regulations giving full effect to the SEAR regime (awaiting publication on the Irish Statute Book) is available **here**.
- A copy of the Central Bank's finalised guidance on the IAF framework is available **here.**
- A copy of the Central Bank's feedback statement on its Consultation Paper 153 is available **here.**

Key Action Points	All Irish fund management companies and externally managed funds should ensure that the requirements introduced under the IAF has been fully addressed and reflected in revised policies and procedures of the relevant entity.

5.2 Central Bank publishes finalised Administrative Sanctions Procedures Guidelines

On 13 December 2023, the Central Bank published its finalised guidelines relating to its enhanced administrative sanctions procedure (**Finalised ASP Guidelines**) which has been introduced to give further effect to its Individual Accountability Framework under the Central Bank (Individual Accountability Framework) Act 2023 (**Act**). Under changes introduced by the Act, the Central Bank can now take direct enforcement against individuals performing PCF and CF roles in an Irish regulated financial services firm.

It also published its feedback statement to its Consultation Paper 154 in which it provides its response to feedback received from relevant stakeholders on its consultation on draft administrative sanctions procedure guidelines.

The Finalised ASP Guidelines came into force on 13 December 2023 and are available **here**

The Central Bank's feedback statement to Consultation Paper 154 is available **here**

A Dillon Eustace briefing providing an overview of the Finalised ASP Guidelines is available **here**

5.3 Central Bank publishes revised edition of Fitness & Probity Standards and related guidance and extends the list of PCF roles

Central Bank Fitness & Probity Standards

In December 2023, the Central Bank published a revised version of its fitness and probity standards which are issued under Section 50 of the Central Bank Reform Act 2010, replacing the previous standards which had been in place since 2014 (**Revised F&P Standards**).

The Revised F&P Standards amend the previous standards to take account of the fact that the F&P regime now applies to certain Irish holding companies. The Central Bank has also made certain changes to Section 4 of the standards which relates to the obligation to act honestly, ethically and with integrity.

A copy of the Revised F&P Standards is available **here**

Central Bank Guidance on Fitness and Probity Standards

The Central Bank has also updated its June 2018 guidance on the F&P regime to take account of the Revised F&P Standards which was most recently updated in June 2018 (**Revised F&P Guidance**)

The Revised F&P Guidance has been updated to address the changes introduced to the F&P regime as part of the introduction of the Central Bank's Individual Accountability Framework as well as clarifying the due diligence obligations imposed on regulated financial service providers in determining that an individual is fit and proper to perform the relevant role and addressing the extension of the F&P regime to in-scope holding companies.

A copy of the Revised F&P Guidance is available **here**

Extension of list of those performing PCF roles within Irish regulated financial services firms

On 20 December 2023, the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 were published, coming into operation on 29 December 2023 (Regulations).

The Regulations introduce three new pre-approved controlled functions, namely:

- PCF-54 Head of Material Business Lines for Insurance Undertakings;
- PCF-55 Head of Material Business Lines for Investment Firms; and
- PCF 53 Head of Client Asset Oversight (applicable to Irish credit institutions only).

The Regulations also amend PCF-16 Branch Manager of branches established outside of the State in order to introduce a material threshold whereby the role only applies where the business arising from the branch amounts to 5%or more of, as applicable, the assets or revenues or gross written premium of the regulated financial service provider.

A copy of the Regulations is available **here**

Further information on the scope of the newly created PCF roles is available **here**

Key Action Points	All Irish fund management companies and externally managed funds should ensure that their fitness and probity arrangements are updated where necessary to reflect the Revised F&P Standards and Revised F&P Guidance.

6. PRIIPS REGULATION

6.1 Central Bank confirms filing requirements for PRIIPS KID

On 27 November 2023, the Central Bank published a revised edition of its UCITS Q&A in which it confirmed that from 1 January 2024, UCITS authorised prior to 1 January 2023 which produce a PRIIPS KID dated on or after 1 January 2024 must file same with the Central Bank via its portal.

On the same date, the Central Bank also published a revised edition of its Q&A on AIFMD in which it confirmed that any Irish AIF which produces a PRIIPS KID dated on or after 1 January 2024 must also be filed with the Central Bank via its portal.

A copy of the Central Bank's revised UCITS Q&A is available **here.**

A copy of the Central Bank's revised Q&A on AIFMD is available **here.**

The revised web-based guidance on PRIIPS KID published by the Central Bank on the same date is available **here.**

Key Action Points	Where relevant, all Irish fund management companies should ensure that appropriate compliance arrangements are put in place to ensure that PRIIPS KID issued on or after 1 January 2024 are filed with the Central Bank via its portal.

6.2 ESAs provide guidance on concept of "PRIIPS manufacturer" under the PRIIPs Regulation.

Under the PRIIPS Regulation, the obligation to draw up a PRIIPS KID for each fund which is made available to EEA retail investors is imposed on the "PRIIPS manufacturer".

In a revised edition of their PRIIPS KID Q&A published in December 2023, the ESAs confirm that in the case of an investment fund, the UCITS management company or AIFM of the relevant investment fund (Relevant Management Company) must perform the role of PRIIPs manufacturer even where functions are delegated to third parties.

A copy of the revised ESA PRIIPS KID Q&A is available **here.**

Key Action Points	For those Irish UCITS funds and AIF funds which produce a PRIIPS KID, a review should be carried out to determine whether the role of PRIIPS manufacturer is currently being carried out by an entity other than the Relevant Management Company. Following engagement with the Relevant Management Company, the role of PRIIPS manufacturer should then be assumed by the Relevant Management Company and reflected in a revised PRIIPS KID in order to align with the expectations of the ESAs as outlined.

7. MONEY MARKET FUNDS

7.1 ESMA publishes updated guidelines on stress test scenarios under the MMF Regulation

On 19 December 2023, EMSA published a final report containing updated guidelines on stress test scenarios under the MMF Regulation.

The revised guidelines incorporate the following changes:

- updates to the methodology to implement the scenario related to the hypothetical changes in the level of liquidity of the assets held in the portfolio of the relevant money market fund (**MMF**); and
- updates to the specifications on the type of stress tests and their calibration.

The revised guidelines are contained in Annex II to the final report with all updates to the existing guidelines appearing in red.

The revised guidelines will only enter into force two months after the publication of the translations of the guidelines in all EU official languages on the ESMA website. Until then, managers of MMFs must continue to use the parameters set down in the 2022 guidelines.

A copy of the final report containing the updated guidelines is available **here**.

8. ELTIF

8.1 ESMA publishes finalised draft Level 2 Measures under revised ELTIF framework

The revised European Long-Term Investment Funds Regulation[6] , commonly referred to as ELTIF 2.0, enters into force on 10 January 2024.

Under the regulation, ESMA is mandated to prepare draft implementing measures on various aspects of the ELTIF framework. As part of its preparatory work, it published a consultation paper earlier this year in which it sought feedback from interested stakeholders on its proposed implementing measures.

[6] Regulation (EU) 2015/760 as amended by Regulation (EU) 2023/606

On 19 December 2023, ESMA published a final report containing its finalised proposals on the implementing measures (**Draft Implementing Measures)**.

This report has now been submitted to the European Commission for its consideration which must make a decision whether to adopt the Draft Implementing Measures within 3 months. This review period can be extended for a further month if deemed appropriate by the European Commission.

A Dillon Eustace briefing which provides a detailed overview of the key provisions of the Draft Implementing Measures likely to be of interest to asset managers who may be considering the ELTIF product to house investments in private assets, property, infrastructure and other real assets is available **here**.

A copy of the Final Report is available **here**.

A Dillon Eustace guide entitled "Key Features of an Irish ELTIF" is available **here.**

8.2 Central Bank consults on proposed domestic rules governing Irish ELTIFs

On 1 November 2023, the Central Bank published Consultation Paper 155 on a new ELTIF chapter in its AIF rulebook to support the establishment of ELTIFs in Ireland (**Consultation Paper)**.

The Consultation Paper outlines the Central Bank's proposed domestic supervisory and reporting framework which will apply to Irish-domiciled ELTIFs. It also provides a number of important clarifications, including the following:

The Central Bank does not propose imposing any additional product specific rules on Irish-domiciled ELTIFs;

The Irish-domiciled ELTIF can be established using a range of legal structures, including an ICAV, a PLC, an ILP, a unit trust or a CCF

The Irish-domiciled ELTIF will benefit from the same favourable tax treatment currently afforded to Irish domiciled regulated funds; and

It will be possible to structure the Irish-domiciled ELTIF as an umbrella fund with segregated liability between sub-funds which can house different investment strategies or investor types.

The deadline for submission of responses to the Consultation Paper closed on 13 December 2023. The Central Bank is expected to publish a revised version of its AIF Rulebook containing the finalised ELTIF chapter in Quarter 1 2024.

A copy of the Dillon Eustace briefing discussing the Consultation Paper is available **here**

A copy of the Consultation Paper is available **here**

9. CROSS-BORDER DISTRIBUTION FRAMEWORK

9.1 European Commission adopts legislation amending existing cross-border notification requirements under the UCITS and AIFMD frameworks

In December 2022, ESMA published a final report containing draft technical standards on the notifications for cross-border marketing and cross-border management under both the UCITS Directive and the AIFMD, the purpose of which was to improve cross-border notifications.

On 15 December 2023, the European Commission adopted the following draft legislation:

- Commission implementing regulation which contains revised implementing technical standards for the application of the UCITS Directive together with related annexes 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 and the exchange of information between competent authorities on cross-border notification letters (**UCITS Commission Implementing Regulation**);

- Commission delegated regulation supplementing the UCITS Directive with regard to the regulatory technical standards which specify the information to be notified in relation to the cross-border activities of UCITS management companies and UCITS (**UCITS Commission Delegated Regulation)**;

- Commission delegated regulation supplementing the AIFMD with regard to the regulatory technical standards which specify the information to be notified in relation to the cross-border activities of AIFMs (**AIFMD Commission Delegated Regulation)**; and

- Commission implementing regulation which contains revised implementing technical standards with regard to the form and content of information to be notified in respect of cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters (**AIFMD Commission Implementing Regulation)**

The draft legislation adopted by the European Commission must now be scrutinised by the European Parliament and Council of Europe and will not have the force of law until published in the Official Journal.

A copy of the draft UCITS Commission Implementing Regulation is available **here**

A copy of the draft UCITS Commission Delegated Regulation is available **here**

A copy of the AIFMD Commission Implementing Regulation is available **here**

A copy of the AIFMD Commission Delegated Regulation is available **here.**

10. EMIR & SFTR

10.1 Extension of temporary measures for central clearing counterparty collateral requirements

On 13 October 2023, the ESAs published its final report on the extension of temporary emergency measures on central counterparty (**CCP**) collateral requirements under EMIR. The final report contains draft regulatory technical standards which propose to extend the emergency measures which temporarily expand the pool of eligible collateral that CCPs can accept for a further period of six months until 29 May 2024. The measures temporarily expand the pool of eligible collateral to include uncollateralised bank guarantees for non-financial counterparties acting as clearing members and public guarantees for all types of counterparties (subject to certain conditions) for a further six months.

The ESAs final report can be accessed **here**.

10.2 The Central Bank issues administrative sanctions against an ICAV for breach of EMIR reporting obligations

On 28 November 2023, the Central Bank reprimanded and fined an Irish-authorised investment fund, GlobalReach Multi-Strategy ICAV (**ICAV**), €192,500 for failing to comply with its reporting obligations under EMIR to report in-scope derivative trades to a trade repository (**TR**).

In its press release announcing the enforcement action, the Central Bank reiterated the importance of timely and accurate data reporting and the need to ensure that firms must "*have appropriate oversight of data reporting from Board level down, including where data reporting*

is delegated or outsourced. The delegation of reporting obligations must be appropriately managed in order to avoid confusion between the delegates as to their respective reporting responsibilities".

A copy of the Central Bank press release can be accessed **here.**

The "Dear CEO" letter is available **here**.

Key Action Points	Funds and their management companies should refer to the "Dear CEO" letter issued by the Central Bank in February 2019 in respect of industry compliance with the reporting obligations under EMIR and, where necessary, take appropriate action to comply with the supervisory expectations of the Central Bank as outlined therein. The letter included various recommendations including the reporting which counterparties should obtain from its reporting delegates, the oversight of trade rejection reports received from TRs as well as a recommendation that counterparties should include compliance with EMIR reporting as a standard agenda item for all board meetings.

10.3 Margin Exemption for Single-Stock Equity Options and Index

On 20 December 2023, the ESAs published joint draft regulatory technical standards (**Draft RTS**) amending existing RTS in Commission Delegated Regulation (EU) 2016/2251 which supplement EMIR. The Draft RTS propose a two-year extension to the temporary exemption currently afforded to non-centrally cleared OTC single-stock equity options and index options (**Equity Options**) from the bilateral margining requirements. The exemption was set to expire on 4 January 2024 but will now be available until 4 January 2026.

The ESAs have also published a "no action" opinion (**No Action Opinion**) to accompany the Draft RTS, given the practical timeline difficulty for the Draft RTS to be considered by the European legislators before 4 January 2024. The No Action Opinion provides that national competent authorities should not prioritise any supervisory or enforcement action against counterparties for failures to comply with the risk mitigation requirements under EMIR in respect to Equity Options.

A copy of the Draft RTS can be accessed **here**.

A copy of the No Action Opinion can be accessed **here**.

10.4 EMIR Refit Reporting Regime

The new EMIR Refit reporting regime comes into effect on 29 April 2024.

The new EMIR Refit reporting regime introduces:

- greater alignment of data standards, formats, methods, and arrangements for reporting including the use of ISO 20022 XML methodology;
- increase in data fields;
- a requirement for the reporting of outstanding derivatives to be updated by 26 October 2024;
- a new requirement for an entity that is responsible for reporting under EMIR to notify its NCA (and, if different, the NCA of the reporting counterparty) of certain types of significant errors or omissions in its reporting, as soon as it becomes aware of them.

The EMIR Refit reporting regime has been established by the following;

- **New RTS**: Commission Delegated Regulation (EU) 2022/1855 of 10 June 2022 (RTS) and Commission Delegated Regulation (EU) 2022/1860 of 10 June 2022 (ITS) which are available **here** and **here**.
- **New validation rules**; New validation rules effective 29 March 2023 which are available **here**.

- **New Guidelines:** ESMA final report on Guidelines for reporting under EMIR applicable from 29 April 2024 which are available **here.**

For a detailed analysis of the EMIR Refit reporting regime, please refer to the Dillon Eustace briefing on the topic which is available **here**.

10.5 EMIR 3.0

On 1 December 2023, the European Council published its mandate for negotiations with the European Parliament in respect of the package of proposals published by European Commission on 7 December 2022, including a proposal to amend EMIR seeking to make derivatives clearing in the EU more attractive. This package of reforms is commonly referred to as EMIR 3.0.

The proposal includes measures to improve the attractiveness of EU counterparties (**CCPs**). It seeks to simplify the procedures for CCPs launching products and changing models as well as introducing a non-objection procedure for certain changes. The proposal also includes measures to reduce the excessive reliance of EU market participants on non-EU CCPs as well as other miscellaneous measures such as amendments to intragroup transactions, changes to reporting obligations and risk mitigation measures, changes to clearing thresholds and proposals in relation to Non-Financial Counterparties. It also seeks to amend rules governing CCPs participation and collateral requirements, such as proposing that CCPs should not, to the best of their ability, hold intraday variation margin calls and extending the classes of eligible margin to include bank guarantees and public guarantees in certain circumstances.

In addition, a separate proposed **Directive** seeks to amend the UCITS Directive[7], Investment Firms Directive (**IFD**)[8] and Capital Requirements Directive (CRD)[9]. The proposed Directive seeks to eliminate counterparty risk limits for all OTC derivative transactions from counterparty risk limits under Article 52 of the UCITS Directive. This measure aims to establish a level playing-field between exchange traded and OTC derivatives and to better reflect the risk reducing nature of CCPs in derivative transactions. In both instances such an exclusion will only apply where the derivative transaction is centrally cleared by a CCP that is authorised or recognised under EMIR.

The proposal also includes a proposed **Regulation** including amendments to the Money Market Funds Regulation (**MMF**)[10] to also exclude centrally cleared derivative transactions from counterparty risk limits.

Please see our earlier briefing paper on the key aspects of EMIR3.0 which is available **here**.

The package of CMU proposal is available **here**.

11. AML & CTF

11.1 Central Bank's Updated Guidance on Beneficial Ownership Register of Certain Financial Vehicles

On 20 October 2023, the Central Bank published an updated guidance document (**2023 BOR Guidance**) on the Beneficial Ownership Register of Certain Financial Vehicles (**the Register**).

The updates made within the 2023 BOR Guidance include:

- the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 (S.I. No 308 of 2023) which amends the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities)

[7] Directive 2009/65/EU
[8] Directive (EU) 2019/2034
[9] Directive 2013/36/EU
[10] Regulation (EU) 2017/1131

Regulations 2019 to provide that access requests by members of the public to the Register must meet a threshold of legitimate interest; and

- The replacement of the Central Bank's Online Reporting (**ONR**) System with the Central Bank of Ireland Portal (**the Portal**).

A copy of the 2023 BOR Guidance can be accessed **here.**

11.2 Updating of EU list of high-risk countries to remove Cayman Islands and Jordan

The FATF plenary meeting in October 2023 concluded that Albania, the Cayman Islands, Jordan and Panama will no longer be subject to the FATF's increased monitoring process.

On 12 December 2023, the European Commission adopted a delegated regulation (**Delegated Regulation**) removing Cayman Islands and Jordan from the list of high-risk third countries with strategic AML and counter-terrorist financing (CTF) deficiencies (**High-Risk Third Country List**) which is contained at the Annex to Commission Delegated Regulation (EU) 2016/1675.

The Delegated Regulation will be submitted to the Council of the EU and the European Parliament for scrutiny and if neither institution objects, the Delegated Regulation will be effective 20 days following its publication in the Official Journal.

Despite the FATF's removal of Albania and Panama from its list of jurisdictions under increased monitoring, the European Commission has not removed Albania or Panama from its High-Risk Third Country List.

A copy of the FATF publication from its October plenary meeting can be accessed here.

A copy of the Delegated Regulation can be accessed here.

11.3 EBA Guidelines on Policies and Controls for the Effective Management of ML/TF Risk Factors

From 3 November 2023, the EBA's guidelines on policies and controls for the effective management of money laundering and terrorist financing (**ML/TF**) risks when providing access to financial services (**Guidelines**) are effective. The Guidelines were published by the EBA on 31 March 2023.

The Guidelines address the steps institutions should take to facilitate access to financial services by those categories of customers which are particularly vulnerable to unwarranted "de-risking". The concept of "de-risking" refers to decisions made by credit and financial institutions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk.

The Guidelines:

- outline the steps that institutions should take when considering whether to refuse or terminate a business relationship with a customer based on AML/CFT compliance grounds;
- require that decisions to refuse a business relationship or to apply risk-mitigating measures must be proportionate and aligned with the principle of non-discrimination; and
- address the complaint mechanisms that institutions should adopt to ensure customers can make a complaint if they believe they have been treated unfairly.

A copy of the Guidelines can be accessed here.

11.4 EU List of Prominent Public Functions

On 10 November 2023, the European Union published a list (**List**) of prominent public functions at national level, at the level of international organisations and at the level of the European Union institutions and bodies in the Official Journal.

The List outlines the prominent public functions at EU member state level, at the level of international organisations and at the level of EU institutions and bodies. The List therefore provides clarity on classifications of politically exposed persons or PEPs within EU member states for the purposes of the Fourth Anti-Money Laundering Directive[11].

A copy of the List can be accessed here.

11.5 Provisional Agreement reached on proposed Anti-Money Laundering Authority Regulation

On 13 December 2023, the Council of the EU published a press release to announce that a provisional political agreement (**Provisional Agreement**) has been reached between the Council of the EU and the European Parliament on the proposed Regulation (**AMLA Regulation**) establishing the Anti-Money Laundering Authority (**AMLA**).

The AMLA Regulation was published by the European Commission in 2021 as part of its AML reform package (**AML Reform Package**) and the interinstitutional negotiations between the Council of the EU, the European Parliament and the European Commission on the AML Reform Package have been ongoing since May 2023. In its press release, the Council of the EU note that the establishment of AMLA, as a European regulatory authority for countering money laundering and financing of terrorism, is the "centrepiece" of the AML Reform Package. The Provisional Agreement reached on the AMLA Regulation is therefore a welcomed development in the progression of the AML Reform Package.

The Provisional Agreement does not include a conclusion regarding the location of AMLA, the selection process for which is continuing to be negotiated between the Council of the EU and the European Parliament.

Negotiations between the Council of the EU and the European Parliament are also ongoing in respect of the wider AML Reform Package such as the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (**AML Regulation**) (2021/0239(COD)) **(also known as the EU AML/CFT single rulebook**) and the proposed Sixth Anti-Money Laundering Directive (**MLD6**) (2021/0250(COD)). However, in the European Parliament's press release concerning the Provisional Agreement, it outlines that provisional agreement has been reached on certain horizontal aspects of the broader AML Reform Package on matters such as whistleblowing reporting channels, cooperation between the FIUs and AMLA, and the circumvention of targeted financial sanctions.

The text of the Provisional Agreement still needs to be finalised and confirmed by the Committee of Permanent Representatives (**COREPER**). The text of the Provisional Agreement and the legal texts of the remaining elements of the AML Reform Package are expected to be prepared for formal adoption by the Council of the EU and the European Parliament in early 2024.

AMLA is expected to be operational in 2024 and its establishment will likely result in increased AML and CFT supervision, not only for Selected Entities, but for all firms as national supervisory authorities will be under increased scrutiny by AMLA and AMLA's implementing or regulatory technical standards will be binding on all obliged entities, not just those directly supervised entities.

A copy of the Council of the EU's press release can be accessed **here**.

A copy of the European Parliament's press release can be accessed **here**.

[11] Directive (EU) 2015/849

For more information on the broader AML Reform Package proposed by the European Commission in 2021, please refer to our previous client briefing **here**.

11.6 EBA Updates to the Single Rulebook Q&A on AMLD4

On 22 December 2023, the EBA updated its Single Rulebook Questions and Answers (**Q&A**) publication on the Fourth Anti-Money Laundering Directive[12] (the **AMLD4 Single Rulebook Q&A**).

The Q&As in respect of the following matters have been updated:

- Identifying the customer of a Payment Initiation Service Provider (**PISP**) (Article 3 (13) of AMLD4); and
- Identifying the customer of a collecting Payment Service Provider (**PSP**) (Article 3 (13) of AMLD4).

The updated AMLD4 Single Rulebook Q&A can be accessed **here**.

11.7 FATF Public Consultation: Draft Risk-Based Guidance on Beneficial Ownership and Transparency of Legal Arrangements

On 31 October 2023, the Financial Action Task Force (**FATF**) launched a public consultation on draft risk-based guidance (**Draft Guidance**) on FATF recommendation 25 on beneficial ownership and transparency of legal arrangements. The Draft Guidance is intended to assist countries in implementing the revisions to FATF recommendation 25 that were agreed in February 2023.

The public consultation closed on 8 December 2023 and the FATF will consider the responses at its plenary meeting to be held in February 2024.

Information on the consultation is available **here.**

12. BENCHMARKS REGULATION

12.1 Extension of transitional timeframe applicable to use of third country benchmarks

On 23 October 2023, Commission Delegated Regulation (EU) 2023/2222 was published in the Official Journal.

This extends the transitional time-frame applicable to the third-country benchmark regime under the Benchmarks Regulation[13] to 31 December 2025. As a result of this extension, EU management companies can continue to use third-country benchmarks for the purposes set down in the Benchmarks Regulation until that date without an equivalence decision from the European Commission in respect of specific third country administrator or benchmark or (ii) the relevant benchmark administrator being recognised or endorsed by an EU competent authority under the third country benchmark regime and appearing on the relevant ESMA register.

This has been reflected in a revised ESMA Q&A on the Benchmarks Regulation published by ESMA on 15 December 2023.

A copy of the Commission Delegated Regulation 2023/2222 is available **here**

A copy of the revised ESMA Q&A on the Benchmarks Regulation is available **here**

[12] Directive 2015/849/EU
[13] Regulation (EU) 2016/1011

12.2 Proposed reform of Benchmarks Regulation initiated by the European Commission.

On 17 October 2023, the European Commission published a proposal to amend the Benchmarks Regulation which significantly reduces the scope of the rules set down in the Benchmarks Regulation (**European Commission Proposal**).

This is intended to reduce the administrative and regulatory burden imposed both on EU benchmark users (which will include UCITS management companies and AIFMs (**Management Companies)** which "use" a benchmark within the meaning of the Benchmarks Regulation on behalf of funds under management) and on EU benchmark administrators.

Proposed amendments to the existing Benchmarks Regulation regime include:

- Reduction of the scope of third-country rules to only those benchmarks which are "significant" for the EU's markets;
- Third country benchmarks which are not "significant" benchmarks will no longer fall within the scope of the Benchmarks Regulation rules, meaning that Management Companies will be able to continue to use a "wide array" of third-country benchmarks without being required to ensure that the benchmark complies with the Benchmarks Regulation save where that third country benchmark is identified as a "significant" benchmark;
- The Benchmarks Regulation will also be amended to apply only to administrators of EU benchmarks that are (i) "significant" benchmarks, (ii) "critical" benchmarks and (iii) EU "climate" benchmarks (i.e. those established as Paris-aligned benchmarks or Climate-transition benchmarks). This is in order to ensure a level playing field between third country benchmarks and EU benchmarks.

The Commission has proposed that the new rules will apply directly in the Member States as of 1 January 2026.

The Commission's proposal will now be considered and negotiated by the European Parliament and the Council.

On 20 December 2023, the Council of Europe published a press release confirming that it had agreed its negotiating mandate on the proposed regulation amending the Benchmarks Regulation.

A copy of the European Commission Proposal is available **here** and its related press release is available **here**.

A copy of the Council of Europe's negotiating mandate is available **here** with its related press release available **here.**

13. LIQUIDITY MANAGEMENT

13.1 FSB and IOSCO publish recommendations and guidelines on liquidity risk management within open-ended funds

On 20 December 2023, IOSCO and the Financial Stability Board (**FSB**) published policies to address vulnerabilities arising due to mismatches between the liquidity of assets and the redemption frequency in certain open-ended funds.

In its Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (**FSB Recommendations**) which is addressed to member financial regulators, the FSB sets out key objectives for an effective regulatory and supervisory framework to address vulnerabilities arising from liquidity mismatch in open-ended funds. The FSB Recommendations provide guidance to financial regulators on the redemption terms that open-ended funds can offer to investors based on the liquidity of their specific asset holdings, the FSB recommends the adoption of a "bucketing" approach under which open-ended funds would be categorised depending on the liquidity of their assets and subject to specific requirements based on such categorisation. They also advocate for the greater inclusion of anti-dilution liquidity management tools in fund constitutional documents and greater use of such tools in both normal and stressed market conditions.

IOSCO has simultaneously published its finalised guidelines on use of anti-dilution liquidity management tools to appropriately manage liquidity risk within open-ended funds (**IOSCO Guidelines).** The IOSCO Guidelines provide detailed guidance to member financial regulators on the design and use of anti-dilution liquidity management to open-ended funds and are intended to support greater use of such tools by open-ended funds (with the exception of exchange traded funds and money market funds which fall outside of the scope of the guidelines). IOSCO has also committed to revisit its existing 2018 Liquidity Risk Management Recommendations and related "Good Practices" guidance in 2024 to address the FSB Recommendations.

A copy of the FSB Recommendations is available **here**.

A copy of the IOSCO Guidelines is available **here**.

14. MISCELLANEOUS

14.1 Changes to US securities settlement cycle

On 28 May 2024, new rules being implemented by the Securities & Exchange Commission in the United States (**SEC)** to shorten the standard settlement cycle for most broker-dealer transactions in U.S. securities from two business days after the trade date (T+2) to one business day after the trade date (T+1) take effect. The SEC has **noted** that the shortening in settlement cycle is intended to "reduce the credit, market and liquidity risks in securities transactions faced by market participants".

Many Irish funds currently operate a longer fund settlement cycle than T+1. From 28 May 2024 onwards, for those Irish funds with exposure to US securities, this will result in the fund being required to settle any trades in US securities on T+1 despite investor subscription monies only being received after the trade has been settled.

This may, depending on the level of exposure of the fund to US securities and the settlement cycle of the relevant fund, create a funding gap pending receipt of subscription monies from incoming investors. This in turn may result in such a fund breaching applicable investment restrictions, including the prohibition on UCITS funds on borrowing more than 10% of net assets on a temporary basis in order to settle US security trades. The UCITS restriction which prohibits a UCITS fund from holding more than 20% of net assets on deposit with a single credit institution may also be breached during the redemption cycle as a result of a fund's cash flow mismatch resulting from the shortening of the US securities settlement cycle.

Such funds may also be exposed to increased settlement risk which in turn may result in an increase in cash penalties being imposed under the EU Central Securities Depositary Regulation which are payable by the party responsible for the failure.

Other operational implications may also need to be considered such as the impact on FX transactions, securities lending arrangements and NAV production timelines.

Key Action Points	Irish funds with any exposure to US securities should start to engage with relevant service providers in order to assess the likely impact of the change in the US securities settlement cycle on their funds. Irish funds which have significant exposure to US securities may, depending on their existing settlement cycle, want to consider changing the fund settlement cycle to align more closely with the T+1 settlement timeframe applicable to US securities in order to reduce the funding gap /cash flow mismatch and investment breaches which could potentially arise after 28 May 2024 next. In the case of Irish UCITS funds, any changes made to the prospectus/fund supplement reflecting the changes in the fund settlement cycle will be subject to prior review by the Central Bank which should be borne in mind when implementing a timetable for any change to the fund settlement cycle. Service level agreements in place with relevant service providers should also be updated to reflect the change in fund settlement cycle.

14.2 Department of Finance publishes progress update on its Funds Sector 2030 Review

On 21 December 2023, the Department of Finance published a progress update on its review of the Irish Funds sector which was initiated in June 2023.

The progress report highlights the main trends, risks and challenges and opportunities facing the funds industry in Ireland in the period to 2030, as identified by respondents to the consultation. It also summarises common issues and proposals raised relating to the Irish taxation regime for funds, the regimes for real estate investment trusts and Irish real estate funds and the use and scope of the existing Section 110 regime.

The Funds Review Team within the Department of Finance must report to the Minister for Finance by summer 2024.

A copy of the progress report is available **here**.

14.3 Conflict in Ukraine

On 18 December 2023, the Council of Europe announced the introduction of further restrictive measures against Russia under which new sectoral measures and asset freeze provisions were introduced under amendments made to Council Regulation (EU) 833/2014 and Council Regulation 269/2014 respectively.

A full overview of the changes introduced under this twelfth package of measures is available **here.**

14.4 European Commission publishes draft delegated acts on critical ICT third-party service providers and oversight fees under DORA

On 16 November 2023, the European Commission published two draft delegated acts (**Delegated Acts**) to be adopted under the Digital Operational Resilience Act (**DORA**).

As discussed in our previous Quarterly Legal and Regulatory Update, on 29 September 2023, the ESAs published joint technical advice to the European Commission in respect of the Delegated Acts to be adopted by the European Commission in response to the European Commission's request in December 2022 for the ESAs' input on certain aspects of DORA.

The Delegated Acts relate to:

(i) the criteria to designate ICT third-party service providers as critical ICT third-party providers (**CTPP**); and
(ii) the types of expenditure to be covered by oversight fees and the fee calculation.

The European Commission sought feedback on the Delegated Acts and the public consultation on the Delegated Acts ended on 14 December 2023.

The European Commission intends to adopt the Delegated Acts in the second quarter of 2024 and is required to adopt the Delegated Acts by 17 July 2024.

A copy of the Delegated Acts can be accessed **here**.

For information on DORA more generally, which will apply from 17 January 2025, you can access the text of DORA here and our previous briefing on DORA **here**.

14.5 ESAs launch consultation on second batch of DORA technical standards

Under DORA, the ESAs are required to develop 13 policy documents, which have been presented in two batches of public consultations.

On 8 December 2023, the Joint Committee of the ESAs published the second batch of DORA consultations, with the first batch of DORA consultations published earlier this year in June 2023.

The second batch of DORA consultations consists of consultation papers on draft regulatory technical standards (RTS), implementing technical standards (ITS), and guidelines under DORA concerned with the following areas:

- Major ICT-related incident reporting;
- Digital operational resilience testing;
- ICT third-party risk management; and
- Oversight over critical ICT third-party providers.

The second batch of DORA consultations is open for feedback by stakeholders until 4 March 2024.

The second batch of DORA consultations can be accessed here.

For more information on the second batch of DORA consultations please refer to our recent client briefing **here**

14.6 Publication of Regulation creating a European Single Access Point published in the Official Journal

On 13 December 2023, Regulation (EU) 2023/2859 establishing a European single access point (**ESAP**) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (**ESAP Regulation**) was published in the Official Journal.

The ESAP Regulation establishes a framework under which financial and sustainability-related information about EU companies and EU investment products will be made publicly available via a single access point. It does not impose any additional reporting obligations on such entities but instead provides access to information already made public in accordance with existing EU legislation.

On the same date, Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023 amending certain Directives as regards the establishment and functioning of the European single access point (**ESAP Omnibus Directive**) and Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point (**ESAP Omnibus Regulation**) were also published in the Official Journal.

Under the ESAP Regulation, the ESAP platform must be available by 10 July 2027. UCITS management companies, AIFMs and investment firms will be required to make relevant information available on the ESAP platform in accordance with the specific timeframes detailed in the ESAP Omnibus Directive.

A copy of the ESAP Regulation is available **here**

A copy of the ESAP Omnibus Directive is available **here**

A copy of the ESAP Omnibus Regulation is available **here**

14.7 Extension of virtual meetings for Irish companies until 31 December 2024

On 15 December 2023, the Department of Enterprise, Trade and Employment confirmed that the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 related to the holding of virtual meetings, including AGMs, by Irish companies has been further extended to 31 December 2024.

A copy of the relevant statutory instrument giving effect to this extension is available **here**

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below or your usual contact in the Dillon Eustace Asset Management and Investment Funds team.

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