



# Funds

## Quarterly Legal and Regulatory Update

Period covered: 1 July 2022 – 30 September 2022

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## 1. APPROACHING DEADLINES

Approaching deadlines		
Q4 2022	19 October 2022	Return Deadline: Fund management companies must submit their outsourcing registers to the Central Bank. (Please see <a href="#">Section 6.4</a> ).
	1 December 2022	Deadline imposed by the Central Bank on Irish management companies to avail of the fast-track filing process for the filing of pre-contractual documentation which have been updated to address the SFDR Level 2 Regulations or other SFDR-related changes. For further details on this fast-track process, please refer to our briefing available <a href="#">here</a> .
	27 December 2022	Deadline for putting in place new Standard Contractual Clauses (SCCs) to govern transfers of personal data outside of the EEA for existing contracts <sup>1</sup> .
	30 December 2022	Deadline for funds which consider principal adverse impacts of investment decisions on sustainability factors to update prospectuses to include disclosures required under Article 7 of the SFDR. Amendments to pre-contractual documentation to address these disclosure obligations fall within the scope of the Central Bank's fast track filing process which closes on 1 December 2022.
	31 December 2022	UCITS/RIAF Multi-Manager Funds established prior to 20 December 2021 must update their performance fee calculation methodology to align with ESMA's Q&A of July 2021 on Performance Fees in Multi-Manager UCITS/RIAFs.
	31 December 2022	Fund management companies should ensure that any existing Cloud Outsourcing Agreement is updated to comply with ESMA's Guidelines on Outsourcing to Cloud Service Providers.
	TBC Q4 2022	The Central Bank's new template for the Beneficial Register return will become available, (the precise date will be sent to CFVs directly) seeking information on the PPS number (or Central Bank reference number where applicable) of the beneficial owner.
Q1 2023	1 January 2023	Funds falling within the scope of Article 8 or Article 9 of the SFDR must incorporate and publish an "ESG" annex into their prospectus/fund supplements which satisfy the relevant regulatory technical standards published under the SFDR. Amendments to pre-contractual documentation to address these disclosure obligations fall within the scope of the Central Bank's fast track filing process which closes on 1 December 2022.
	1 January 2023	The annual reports of any funds falling within the scope of Article 8 or Article 9 of the SFDR published on or after 1 January 2023 must incorporate an "ESG" annex into their annual report which satisfies the relevant regulatory technical standards published under the SFDR.
	1 January 2023	Where applicable, disclosure obligations in respect of the four remaining environmental objectives listed in Article 9 of the Taxonomy Regulation begin to apply. In addition, the disclosure obligations set down in the Taxonomy Complementary Climate Delegated Act begin to apply. (See <a href="#">Section 3.1</a> and <a href="#">Section 3.6</a> below for further details)
	1 January 2023	All UCITS funds which are made available to EEA retail clients must prepare and publish a PRIIPS Key Information Document from this date.
	TBC Q1 2023	Individual Questionnaires for a holder of a Pre-Approved Control function will no longer be submitted via the Central Bank's Online Reporting System (ONR), but will instead be submitted via the <a href="#">Central Bank Portal</a> .

<sup>1</sup> In a recent development on the EU-U.S. Data Privacy Framework, President of the United States, Joe Biden, signed an executive order on 7 October 2022 on enhancing safeguards for United States Signals Intelligence Activities which outlines the steps which the United States will take to safeguard personal data under the EU-U.S. Data Privacy Framework facilitating transatlantic data flows between Europe and the United States. The steps outlined in the executive order will form the basis for the European Commission's assessment in a new adequacy decision. On the same day, the European Commission published a Questions and Answers document on the EU-U.S. Data Privacy Framework.

## 2. UCITS & AIFMD

### 2.1 Publication of revised ESMA Q&As on the UCITS Directive and on AIFMD

On 20 July 2022, the European Securities and Markets Authority (**ESMA**) published an updated version of its Q&A on the application of the UCITS Directive and its Q&A on the application of the AIFMD (**Q&As**).

The revised Q&As include two new questions on depositaries and one new question on delegation, all of which address the same issues in respect of both UCITS and the AIFMD.

In the first question on depositaries, ESMA clarifies that reconciliation frequency depends not only on the dealing frequency of the relevant AIF or UCITS, but also on any trade which occurs even outside the dealing frequency. If an AIF or UCITS with a weekly dealing frequency trades on a daily basis, daily reconciliations are required.

The second question on depositaries addresses reconciliation frequency in the context of a tri-party collateral manager which is not the depositary. In this case the tri-party collateral manager is appointed by the asset manager and also needs to be the delegate of the depositary. The tri-party collateral manager is required to transmit the end-of-day positions on a fund-by-fund, or compartment-by-compartment, basis. This information allows the depositary to record end-of-day positions, and to verify that the quantity of the identified financial instruments recorded in the accounts opened in its books matches the quantity of the identified financial instruments held in custody by the third party.

The third new question, which addresses the responsibility to ensure compliance with the rules governing marketing communications under the Cross Border Distribution Regulation, is addressed in more detail in [Section 4.1](#) below.

The Q&A on the Application of the UCITS Directive can be accessed [here](#).

The Q&A on the Application of the AIFMD can be accessed [here](#).

### 2.2 Opinion of the European Central Bank on proposed amendments to the AIFMD and UCITS frameworks

In November 2021, the European Commission published a package of legal acts including proposals to amend both the UCITS and AIFMD frameworks in a number of key areas, including delegation arrangements, liquidity risk management, supervisory reporting, loan origination AIFs, supervisory reporting and depositary and custody services (Proposed AIFMD and UCITS Revisions), which were discussed in our previous Quarterly Legal Update at Section 2.5 which is available [here](#)<sup>2</sup>.

On 9 August 2022, the European Central Bank (**ECB**) published an own initiative opinion on the Proposed AIFMD and UCITS Revisions (**Opinion**).

The ECB welcomed the proposal to fill certain regulatory gaps in the AIFMD, to ensure a coherent supervisory approach to the risks that AIFs pose to the financial system, and to provide a high level of investor protection while facilitating integration into the EU financial market.

While the ECB also supported the proposal to better align the requirements of the AIFMD and the UCITS Directive on issues relevant to both, such as delegation arrangements and custodial services, its Opinion focuses on the proposed amendments to the AIFMD framework. In this regard, the Opinion notes that the proposed revisions should also aim to limit the liquidity mismatch between the assets and liabilities of AIFs, by means of measures that specifically target either assets or liabilities and also calls on the European Commission to consider requiring AIFMs to select several (and not only one) liquidity management tools which can be used by open-ended AIFs. The

<sup>2</sup> For further information on the European Parliament's draft report and the Council's position paper on the Proposed AIFMD and UCITS Revisions, please refer to Section 2.3 of our previous [Quarterly Legal and Regulatory Update](#)

ECB also suggest that data of individual AIFs filed with the competent authorities should be made available by ESMA to the ECB and other relevant ESCB central banks to assist them in fulfilling their tasks including defining and implementing monetary policy and contributing to the stability of the financial system.

The Opinion can be accessed [here](#).

## 2.3 European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No.2) Regulations 2022

The European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No.2) Regulations 2022 (**Amending UCITS Regulations**) came into operation on 12 September 2022.

The Amending UCITS Regulations transpose Commission Delegated Directive (EU) 2021/1270 into Irish law and require Irish management companies to:

- (i) take sustainability risks into account when conducting due diligence on investments;
- (ii) where relevant, consider the principal adverse impacts of investment decisions on sustainability factors;
- (iii) update existing risk management procedures to incorporate the assessment of material sustainability risk which may arise for funds under management;
- (iv) identify conflicts of interests which arise as a result of integration of sustainability risks in their processes, systems and internal controls;
- (v) take sustainability risk into account in their organisational structure;
- (vi) ensure that their senior management assumes responsibility for the integration of sustainability risks in the investment and risk management processes; and
- (vii) ensure that they retain adequate resources and expertise for the integration of sustainability risk.

A copy of the Amending UCITS Regulations is available [here](#). Corresponding rules have been imposed on Irish domiciled AIFMs since 1 August 2022 when Commission Delegated Regulation (EU) 2021/1255 took effect.

### Key Action Points

Irish domiciled UCITS management companies and where relevant, Irish domiciled self-managed UCITS funds, should review and update internal investment due diligence, risk management and conflicts of interest arrangements, as well as their internal organisational structures to ensure compliance with the Amending UCITS Regulations.

## 3. SUSTAINABLE FINANCE

### 3.1 Publication of Taxonomy Complementary Climate Delegated Act in Official Journal

On 15 July 2022, Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (**Taxonomy Complementary Climate Delegated Act**) was published in the Official Journal of the European Union.

The Taxonomy Complementary Climate Delegated Act extends the EU Taxonomy framework under Regulation (EU) 2020/852 (the **Taxonomy Regulation**) to provide for certain economic activities relating to natural gas and nuclear energy to be classified as taxonomy-aligned provided that certain criteria have been satisfied.

The Taxonomy Complementary Climate Delegated Act entered into force 20 days after its publication in the Official Journal, and will apply from 1 January 2023.

A copy of the Taxonomy Complementary Climate Delegated Act, as published in the Official Journal, can be accessed [here](#).

A copy of our Dillon Eustace client briefing on this topic is available [here](#).

#### Key Action Points

Irish management companies with funds falling within the scope of the Taxonomy Regulation may want to review existing portfolios to assess whether individual investments which provide exposure to natural gas and nuclear energy economic activities can be considered taxonomy-aligned under the Taxonomy Complementary Climate Delegated Act.

### 3.2 Publication of finalised SFDR Level 2 Measures in Official Journal of the European Union

On 25 July 2022, Commission Delegated Regulation (EU) 2022/1288 was published in the Official Journal of the European Union (**SFDR Level 2 Regulations**).

The SFDR Level 2 Regulations, which contain the finalised Level 2 measures supplementing Regulation (EU) 2019/2088 (the **Sustainable Finance Disclosure Regulation** or **SFDR**), were adopted by the European Commission on 6 April 2022.

These rules will require funds which fall within the scope of Article 8 or Article 9 of the SFDR to provide detailed information on their sustainability-related practices in their pre-contractual, website and annual report disclosures. They also set down additional disclosure obligations for those management companies who are required or choose to consider principal adverse impacts of investment decisions on sustainability factors at entity level under Article 4 of the SFDR.

The disclosure obligations imposed under the SFDR Level 2 Regulations will generally apply from 1 January 2023, with the annual report disclosure obligations set down in the SFDR Level 2 Regulations applying to any annual report published on or after 1 January 2023 regardless of the reference period covered.

For further information on proposed amendments to the SFDR Level 2 Regulations, please refer to [Section 3.8](#) below.

#### Key Action Points

Fund management companies (i) with funds which fall within the scope of Article 8 or 9 of the SFDR or (ii) which are required or choose to consider principal adverse impacts of investment decisions on sustainability factors at entity level under Article 4 of the SFDR should implement appropriate project plans to ensure that all required disclosures can be made by applicable deadlines.

### 3.3 ESAs issue report on the extent of voluntary disclosure of principal adverse impact under Article 4 of the SFDR

On 28 July 2022, the European Supervisory Authorities (**ESAs**) published the first annual report on the current state of entity-level voluntary disclosures of consideration of principal adverse impacts of investment decisions on sustainability factors under Article 4 of the SFDR which must be published on the website of each financial market participant (**ESA Report**).

Having obtained feedback from national competent authorities (**NCA**s), the ESAs have developed a preliminary, indicative and non-exhaustive overview of good examples of best practices and other, less good examples of voluntary disclosures made under Article 4 of the SFDR which is contained in Section 3 of the ESA Report.

The ESA report also contains recommendations to the European Commission as well as providing some recommendations to the NCAs on monitoring compliance of financial market participants with the disclosure obligations imposed under Article 4 of the SFDR.

A copy of the ESA Report can be accessed [here](#).

### Key Action Points

Irish management companies should review the website disclosures they have made under Article 4 of the SFDR against the findings of the ESAs outlined in the ESA Report and, if necessary, consider updating their website disclosures to reflect the good examples of best practices set down therein.

## 3.4 ESAs to report to the European Commission on greenwashing risks and supervision of sustainable finance policies.

In July 2022, the European Commission published a request it has issued to the ESAs for each of them to provide both progress and final reports on several aspects related to greenwashing and its related risks as well as the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing.

The progress reports, which must be published by the ESAs within 12 months of the European Commission's request, should take stock of the work undertaken to date and should focus on how greenwashing is understood and where it may materialize as well as considering any actions taken and tools developed by NCAs to ensure adequate monitoring of greenwashing risks.

The final reports, which must be published by the ESAs within 24 months of the European Commission's request, should build on the findings of the progress reports. The European Commission suggests that this should be complemented by providing examples of greenwashing cases and assessing their impact on the financial market as well as by assessing existing supervisory measures, supervisory obligations and powers related to fighting greenwashing cases.

The European Commission will then use these reports to assess whether or not additional steps are necessary for the effective supervision and enforcement of greenwashing risks within the European Union.

A copy of the European Commission's request to the ESAs is available [here](#).

## 3.5 ESA Queries to Commission on SFDR

On 9 September 2022, the ESAs issued details of additional queries they have submitted to the European Commission relating to the interpretation of Union law with reference to the SFDR (**ESA Q&As**). These include, but are not limited to, queries on:

- how the definition of “sustainable investments” under Article 2(17) of the SFDR should be interpreted and what features should be considered in assessing whether or not an economic activity contributes to an environmental or social objective;
- the scope of Article 9(3) of the SFDR;
- whether funds tracking Paris-Aligned benchmarks or Climate Transition benchmarks can be classified as Article 9(3) products; and
- what is meant by “consideration” of principal adverse impacts of investment decisions on sustainability factors under Article 7(1)(a) of the SFDR.

The Commission has not yet indicated when responses may be issued to these questions.

A copy of the ESA Q&A can be accessed [here](#).

### Key Action Points

Irish management companies with in-scope funds should monitor developments by the European Commission in response to the ESA Q&A and, if necessary, make suitable adjustments to their SFDR framework to address any guidance issued by the European Commission.

## 3.6 European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No.2) Regulations 2022

The European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No.2) Regulations 2022 (**Amending UCITS Regulations**) came into operation on 12 September 2022. For further information, please see [Section 2.3](#) above.



### 3.7 Sustainable Finance - Implementation timeline for SFDR | TR | CSRD | MiFID | IDD | UCITS | AIFMD

ESMA has published a regularly-updated implementation timeline in respect of the following pieces of EU sustainable finance legislation:

- Taxonomy Regulation;
- Sustainable Finance Disclosures Regulation;
- Directive 2014/65/EU (**MiFID II**) and Directive EU/2016/97 (**IDD**) delegated acts;
- UCITS and AIFMD delegated acts;
- Corporate Sustainability Reporting Directive (**CSRD**).

This timeline has most recently been updated on 26 September 2022, and a copy can be accessed [here](#).

### 3.8 Publication of the ESA Final Report on Extended Taxonomy Disclosures under the SFDR

On 30 September 2022, the ESAs published their Final Report on proposed amendments to the existing SFDR Level 2 Regulations<sup>3</sup> to address the extension of the EU Taxonomy framework to include the Taxonomy Complementary Climate Delegated Act.

Under the Draft Amending SFDR Level 2 Regulations (which include revised pre-contractual and periodic reporting annexes), fund management companies with funds falling within the scope of the Taxonomy Regulation will be required to comply with additional specific disclosure obligations about investments in taxonomy-aligned gas and nuclear economic activities. In particular, disclosures must make clear the proportion that such investments represent within all investments, and in environmentally sustainable economic activities.

The Draft Amending SFDR Level 2 Regulations must now be scrutinised by the European Commission. The ESAs have noted in their final report that they have left it to the European Commission to include the expected application date in the draft Amending SFDR Level 2 Regulations. It therefore remains to be seen whether fund management companies will be required to use the revised annexes contained in the Draft Amending SFDR Level 2 Regulations for the purposes of satisfying the SFDR-related disclosures which must be made by the end of this year.

The Final Report can be accessed [here](#).

#### Key Action Points

Irish management companies with funds falling within the scope of the Taxonomy Regulation should consider the disclosure obligations proposed by the ESAs to be introduced under the Draft Amending SFDR Level 2 Regulations, monitor developments relating to the Draft Amending SFDR Level 2 Regulations and adapt their SFDR project implementation plans as necessary.

## 4. CROSS-BORDER DISTRIBUTION FRAMEWORK

### 4.1 Cross Border Distribution Framework/ESMA Guidelines on Marketing Communications

On 20 July 2022, ESMA published revised versions of its Q&A on the UCITS Directive and on AIFMD respectively.

Article 4(1) of Regulation (EU) 2019/1156 (**CBDR**) requires UCITS management companies and AIFMs (**Management Companies**) to ensure that all marketing communications are identifiable as such, are fair, clear and not misleading, and describe both the risks and rewards of buying shares in the relevant fund in an equally prominent manner.

The ESMA Guidelines on Marketing Communications, which have applied since February 2022, specify how the obligations set down in Article 4(1) of the CBDR should be complied with by Management Companies.

<sup>3</sup> See [Section 3.2](#) above for further details on the SFDR Level 2 Regulations

The new Q&A address the issue of whether Management Companies are responsible for ensuring that marketing communications issued in respect of a fund under management by a third-party distributor comply with the Guidelines.

In the response to the Q&A, the European Commission confirms that as marketing is one of the functions included in the management of funds, and therefore subject to the provisions on delegation under both the UCITS and AIFMD frameworks, Management Companies are responsible for compliance with Article 4 of the CBDR irrespective of who the actual entity marketing the fund is, and of the relationship it has with the third party distributor (whether contractual or not).

The ESMA Q&A on the application of the UCITS Directive can be accessed [here](#).

The ESMA Q&A on the application of the AIFMD can be accessed [here](#).

#### Key Action Points

Irish Management Companies should identify any marketing communications issued by third party distributors in respect of funds under management and ensure that such marketing communications comply with the Guidelines, regardless of whether there is a contractual arrangement in place between the relevant Management Company and that third party distributor.

## 5. PRIIPs

### 5.1 Disclosure requirements for EEA UCITS marketed to UK retail investors

On 14 July 2022, the Financial Conduct Authority in the UK (**FCA**) updated its website to confirm that the UK exemption from the requirement for EEA UCITS to produce a PRIIPs KID lasts until 31 December 2026. This exemption applies to both EEA UCITS recognised under Section 272 of the Financial Services and Markets Act 2000 (**FSMA**) and those recognised under the UK's Temporary Markets Permissions Regime (**TMPR**). This means, when being marketed to retail investors in the UK, Irish UCITS that are recognised under either Section 272 of FSMA or the TMPR must produce a UCITS KIID. As a result, Irish UCITS, which are made available to EEA retail investors and are also marketed to UK retail investors, will be required to prepare both a PRIIPs KID which complies with the PRIIPs Regulation and a UCITS KIID which complies with the UCITS Directive.

The relevant FCA webpage is available [here](#).

Please also see our Dillon Eustace client briefing on the topic [here](#).

#### Key Action Points

Irish management companies which manage UCITS which are marketed to UK retail investors should ensure that, notwithstanding any obligation to produce a PRIIPs KID from 1 January 2023 onwards, they continue to publish a UCITS KIID which complies with the UCITS Directive and provide same to relevant UK retail investors.

## 6. CENTRAL BANK

### 6.1 Update to the Central Bank Pre-Submission Process for QIAIFs

On 1 July 2022, the Central Bank of Ireland (**Central Bank**) provided updated guidance with respect to the pre-submission process for certain categories of qualifying investor alternative investment funds (**QIAIFs**).

The revised guidance confirms that pre-submissions are no longer required for loan origination, life settlement or non-Irish real estate QIAIFs. QIAIFs investing less than 10% of their net asset value in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange are also not subject to a pre-submission subject to certain conditions being satisfied. These categories of QIAIFs are now eligible for the usual QIAIF fast-track authorisation process permitted by the Central Bank.



Pre-submissions are still required for QIAIFs seeking to invest in Irish real estate or in crypto assets. In both cases, the Central Bank provides guidance on the information that must accompany these pre-submissions and notes that further information may be required to be submitted where it deems it necessary in the course of assessing a pre-submission.

The updated guidance can be accessed [here](#).

For further information, please see our recent Dillon Eustace client briefing which is available [here](#).

## 6.2 IMF recommendations to the Central Bank on oversight of Investment Funds and Special Purpose Entities

On 27 July 2022, the International Monetary Fund (IMF) published a Financial Sector Assessment Program on Ireland (**Assessment**) containing recommendations to the Central Bank on oversight of investment funds and special purpose entities. The recommendations addressed to the Central Bank include:

- The Central Bank should seek to continue to play a leading role in the ESMA discussions on UCITS eligible assets with a view to developing common approaches to bank loans, delta-one securities and digital assets;
- Prioritise guidance to funds sector on use of full range of liquidity management rules, including encouraging adoption of tools such as swing pricing which result in subscribing or redeeming investors bearing the associated transaction costs;
- Expand data coverage of investment fund sector including on delegation arrangements, credit lines and UCITS leverage;
- Finalise comprehensive framework for treatment of pricing errors;
- Engage with exchange traded funds (ETF) providers to ensure their arrangements with authorised participants and market makers are robust and promote the smooth functioning of the sector, including in times of market stress;
- Work with ESMA, European Systemic Risk Board (ESRB) and the European Commission, as part of the commission's review of the Regulation (EU) 2017/1131 (**Money Market Funds Regulation** or **MMFR**), to promote money market fund (MMF) resilience;
- Strengthen oversight of special purpose entity (SPE) governance and introduce rules on director's time commitments;
- Address any legislative impediments to the Central Bank becoming a signatory to the International Organisation of Securities Commissions (IOSCO) enhanced Multilateral Memorandum of Understanding (MMoU);
- Fill gaps in the legislative framework for winding-up of investment funds, including by clarifying steps to be taken when unitholders of an Investment Fund that has been wound up cannot be contacted; and
- Continue efforts to improve visibility on underlying investors of investment funds.

A copy of the Assessment can be accessed [here](#).

## 6.3 Publication of the Central Bank (Individual Accountability Framework) Bill 2022

On 28 July 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (**Bill**) was published by the Department of Finance. The Bill's principal purpose is to confer powers on the Central Bank to strengthen and enhance individual accountability in the Irish financial services industry by prescribing responsibilities and providing for the allocation of responsibility and accountability for the management and operation of firms regulated by the Central Bank.

The new Senior Executive Accountability Regime (**SEAR**):

- introduces new conduct standards for regulated firms and their management and staff;
- makes enhancements to the existing Fitness and Probity Regime; and
- strengthens the Central Bank's Administrative Sanctions Procedure.

While it is not yet clear when the Bill will be enacted, the Central Bank has indicated that it will consult key stakeholders on implementation and operation of the framework once the Bill has been enacted through the publication of draft implementing regulations and guidance for public consultation.

A copy of the Bill can be accessed [here](#) and the explanatory memorandum can be accessed [here](#).

For more information, please see our Dillon Eustace briefings on this topic "[The Central Bank \(Individual Accountability Framework\) Bill 2022 is published](#)" August 2022 and "[Individual Accountability Framework and SEAR – Key Questions](#)" October 2021.

## 6.4 Central Bank Outsourcing Register Template and Guidance Notes

On 9 August 2022, the Central Bank published its long-awaited outsourcing register templates and also released associated guidance notes for different market participants addressed by its Cross-Industry Guidance on Outsourcing which was published and has applied since December 2021.

All regulated financial service providers whose PRISM Impact Rating is Medium Low or above (or its equivalent) will be required to submit their completed outsourcing register template to the Central Bank via the Online Reporting System (**ONR**). The deadline for the submission was initially 7 October 2022 but has since been extended to 19 October 2022.

The Investment Outsourcing Register template and Guidance Note on Outsourcing Register Template for Markets Firms will be relevant for fund management companies including AIFMs and UCITS management companies.

The outsourcing register templates and guidance notes are available from the Central Bank's website [here](#). For more information on the information requirements for the outsourcing register return, please see our Dillon Eustace client briefing [here](#).

### Key Action Points

All RFSPs, including AIFMs and UCITS management companies, with a PRISM Impact Rating of Medium Low or above (or its equivalent) must submit their outsourcing registers to the Central Bank via the ONR by 19 October 2022.

## 7. CONFLICT IN UKRAINE

### 7.1 Sanctions adopted following Russia's military aggression against Ukraine

In reaction to Russia's continued military aggression against Ukraine, the European Union has adopted additional economic sanctions against Russia and Belarus which have been introduced through a suite of packages adopted by the Council of the European Union announced during the period under review.

Under the measures adopted by the Council on 21 July 2022, the existing prohibition on accepting deposits has been expanded to deposits from legal persons, entities or bodies established in third countries and majority-owned by Russian nationals or natural persons residing in Russia. Additionally, the acceptance of deposits for non-prohibited cross-border trade will now be subject to a prior authorisation by competent authorities. This suite of packages announced on 21 July 2022 also amended the existing sanctions regime to expand the scope of those individuals subject to restrictive measures as well as to impose a reporting obligation on designated persons with frozen assets within a Member State jurisdiction to report these assets to the relevant competent authority.

The package of sanctions announced on 21 July 2022 can be accessed [here](#).

The Central Bank of Ireland has also updated its webpage to provide information on how such individuals should report funds or economic resources located in Ireland, including a Self-Declaration Reporting Form. Further details are available [here](#)

On 26 July 2022, the Council announced that it was extending the restrictive measures targeting specific sectors of the economy of the Russian Federation for a further six months until 31 January 2023. The related press release is available [here](#).

On 4 August 2022, the Council announced the publication of Commission Implementing Regulation (EU) 2022/1354 which imposed restrictive measures on two additional individuals, details of which are available [here](#). The list of those individuals subject to restrictive measures was further expanded by an additional three individuals on 1 September 2022 via Council Implementing Regulation (EU) 2022/1446 which is available [here](#).

The Council also announced on 14 September 2022 the extension of the restrictive measures targeting those responsible for undermining the territorial integrity, sovereignty and independence of Ukraine for a further six months until 15 March 2023.

The Council's press release of 14 September 2022 is available [here](#).

## 8. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

### 8.1 Beneficial Ownership Register for Certain Financial Vehicles

On 18 August 2022, the Central Bank of Ireland released a statement on proposed changes for the Beneficial Ownership Register for Certain Financial Vehicles (CFVs) (the **Register**) in Q3 2022 (**Statement**).

In previous correspondence issued in July 2022, the Central Bank indicated that; (1) the collection of PPS numbers for beneficial owners of CFVs; and (2) the collection of Central Bank reference numbers for beneficial owners of CFVs who do not hold a PPS number, but who have previously been approved in a pre-approval controlled function (PCF) role, would commence from 13 September 2022. At that time it was indicated that the current reporting template for the Beneficial Ownership Register would be updated from 13 September 2022 to provide for the inclusion of this data.

The Statement has confirmed that the issue of the updated reporting template has been postponed. The new template will become available in Q4 2022. The precise date will be communicated to CFVs prior to such date and at the earliest opportunity.

The Central Bank further indicated in July 2022 that a new “verification of identity process” will need to be completed by the CFV in respect of any other beneficial owners (i.e. any beneficial owner not set out in (1) or (2)). The verification of identity process requires the beneficial owner to complete a “declaration of verification of identity form” which should be submitted by the CFV via the ONR. Following receipt, the Central Bank will communicate a unique Central Bank reference number to the relevant beneficial owner by email which must then be shared by that beneficial owner with the CFV in order that the CFV can use this information for its filings with the Register. In July 2022, the Central Bank indicated that the “verification of identity process” would be in operation from 08 August 2022. The Statement confirms that the “verification of identity process” is now live since 08 August 2022.

A copy of the statement is available [here](#) and a copy of the Central Bank’s July correspondence is available [here](#).

#### Key Action Points

The Central Bank recommends that CFVs engage with the “verification of identity process” for any beneficial owners which do not currently have a PPS number or a Central Bank reference number.

## 9. EMIR & SFTR

### 9.1 ESMA Q&A on SFTR data reporting

On 7 July 2022, ESMA published an updated version its Questions and Answers on Regulation (EU) 2015/2365 (the **Securities Financing Transactions Regulation** or **SFTR**) data reporting (**Q&As**). The first updated Q&A clarifies that trade depositaries should ensure that securities financing transactions (**SFT**) are included in trade reports up until the date to which their maturity date refers to unless they have been terminated/ errored before their maturity date. The second updated Q&A confirms that counterparties should not send valuation or collateral updates on the SFT's final day, and this also applies for "overnight transactions" on the day of conclusion.

A copy of the Q&A on SFTR reporting can be accessed [here](#).

### 9.2 ESMA consults on clearing and derivative trading obligations in view of the 2022 status of the benchmark transition

On 11 July 2022, ESMA launched a consultation on clearing obligations (**CO**) and derivative trading obligations (**DTO**) in view of the 2022 status of the benchmark transition.

The consultation paper comments on the status of the benchmark reform and presents, in Annex III, two draft regulatory technical standard (**RTS**) further amending the RTS (Delegated Regulation (EU) 2015/2205) on the CO and amending RTS (Delegated Regulation (EU) 2017/2417) on the DTO that ESMA had developed under Article 5(2) of Regulation (EU) No 648/2012 (**EMIR**) and Article 32 of Regulation (EU) No 600/2014 (**MiFIR**). The draft RTS on the CO will build on the first amending RTS on the CO which was published in the Official Journal of the European Union on 17 May 2022 and entered into force the following day.

The draft RTS seeks to extend the scope of the CO and DTO in the context of the benchmark reform which provides for the cessation of certain interest rates (risk free rates or RFR). ESMA proposes to amend; (1) the RTS on the CO by the introduction of a new overnight indexed swap class referencing TONA (JPY) and expanding the maturities in scope for the overnight index swaps classes referencing SOFR (USD); and (2) the RTS on the DTO by introducing certain overnight indexed swap classes referencing €STR (EUR).

The consultation closed on 30 September 2022.

A copy of the consultation paper can be accessed [here](#). A copy of the first amending RTS on the CO can be accessed [here](#).

### 9.3 List of third-country markets considered as equivalent to a regulated market in the EU for the purposes of the definition of OTC derivatives under EMIR

On 25 July 2022, ESMA published a list of third-country markets considered as equivalent to a regulated market in the European Union for the purposes of the definition of OTC derivatives under EMIR.

The list includes specified markets in the USA, Australia, Japan, Canada and Singapore. The list can be accessed [here](#).

### 9.4 Public Register for the Clearing Obligation under EMIR

On 6 September 2022, ESMA updated the public register for the clearing obligation under EMIR to remove OTC derivatives referencing LIBOR and EONIA from scope. In accordance with Article 6 of EMIR, ESMA is required to establish, maintain and keep up to date a public register in order to identify the classes of OTC derivatives subject to the clearing obligation. The public register contains the following information:

- Section 1 - the classes of OTC derivatives that are subject to the clearing obligation and dates of application;

- Section 2 – the classes of OTC derivatives that European CCPs have been authorised to clear as notified to ESMA.

Please see the updated public register [here](#).

## 10. MONEY MARKET FUNDS

### 10.1 Central Bank publishes a Notice of Intention in relation to the application of the ESMA Guidelines on stress scenarios under the Money Market Fund Regulation

On 4 July 2022, the Central Bank published a notice of intention (**Notice of Intention**) in relation to the ESMA Guidelines on Stress Test Scenarios under the MMFR (**Guidelines**).

The Guidelines apply in relation to Article 28 of the MMFR and establish common reference parameters for the stress test scenarios to be included in the stress tests conducted by MMFs or managers of MMFs in accordance with that Article.

The Notice of Intention confirms that the Central Bank expects all Irish-domiciled managers of MMFs to comply with the Guidelines with effect from 4 July 2022.

A copy of the Notice of Intention is available [here](#).

## 11. CSDR

### 11.1 ESMA consults on cash penalty process for cleared transactions

On 11 July 2022, ESMA launched a consultation on possible amendments to Commission Delegated Regulation (EU) 2018/1229 (**Delegated Regulation**) aiming at simplifying the process of collection and distribution of cash penalties for settlement fails relating to cleared transactions under Regulation (EU) No 909/2014 (**CSDR**).

ESMA proposes to allow central securities depositories to collect and distribute all types of penalties, including those for settlement fails relating to cleared transactions.

The consultation period ran from 11 July 2022 to 9 September 2022. A copy of the consultation paper can be accessed [here](#).

### 11.2 ESMA publishes updated Q&A on CSDR

On 3 August 2022, ESMA published updated Q&As on the implementation of the CSDR. The update includes new questions on the calculation of cash penalties and on bilateral cancellation facilities. These are set out in Part III, Question 3 and Question 10 respectively.

The updated Q&A document can be accessed [here](#).

## 12. BENCHMARKS REGULATION

### 12.1 ESMA launches consultation on rules for recognition under the Benchmarks Regulation

On 8 July 2022, ESMA launched a consultation on amendments to the RTS published under Regulation (EU) 2016/1011 (**Benchmarks Regulation**) which cover the form and content of an application for recognition.

The consultation closed on 9 September 2022. A copy of the consultation is available [here](#).

## 12.2 ESMA publishes its response to the European Commission consultation on third country benchmarks

On 19 August 2022, ESMA published its response to the European Commission's consultation, which was issued in May 2022, on the regime applicable to the use of benchmarks administered in a third country under the Benchmarks Regulation.

In its response, ESMA notes that very few jurisdictions have followed the EU's regulatory approach to the provision and use of benchmarks and that the scope of the regulatory regimes for financial benchmarks therefore differs significantly between EU and other jurisdictions. ESMA notes that third country jurisdictions which do have a regulatory framework in place differ to the EU, having a narrower scope of regulation and supervision with a focus on the most critical or systemic financial benchmarks. The Benchmarks Regulation, by contrast, covers all types of benchmarks used in the EU.

ESMA suggests that the current restrictions on the use of third country benchmarks under the Benchmarks Regulation should be removed following a risk-based approach. It also agrees with the European Commission's proposal to create a new category of "strategic benchmarks" which would be the only category of benchmarks subject to mandatory restrictions of use.

ESMA also proposes that an EU ESG benchmark label should be introduced in order to assist in eliminating greenwashing.

The ESMA response can be accessed [here](#). The Commission's initial consultation is available [here](#).

## 13. MISCELLANEOUS

### 13.1 Protected Disclosures (Amendment) Act 2022

On 21 July 2022, the Protected Disclosures (Amendment) Act 2022 (the **Act**) was signed into law. The Act transposes Directive (EU) 2019/1377 (**Whistleblowing Directive**) and amends the Protected Disclosures Act 2014. The Act will broaden the provisions of the current Irish protected disclosures regime, building on the 2014 legislation. A commencement order will be required to bring the 2022 Act into force.

The Act introduces, among other things, an obligation on Irish domiciled UCITS management companies and AIFMs (including internally managed Irish domiciled UCITS and AIFs) to establish internal reporting channels and procedures for their workers to make protected disclosures. The Act provides that internal reporting channels and procedures can be operated either internally by a person or department designated by the employer or alternatively by an external third party authorised by the employer. Consequently, Irish management companies will have to update their current whistleblowing policies and internal reporting procedures to bring them in line with the new provisions of the Act once the relevant commencement order has been signed into law.

A copy of the Act can be accessed [here](#).

#### Key Action Points

Irish fund management companies should review and update their whistleblowing policies and internal reporting channels and procedures in line with the Act to ensure compliance with the Act once the relevant commencement order has been signed.

### 13.2 Central Bank releases Regulations on Levies

On 31 August 2022, the Central Bank Act 1942 (Section 32D) Regulations 2022 (S.I. No. 427 of 2021) (**Regulations**) came into operation setting out the levy contribution payable by financial service providers in respect of the "levy period" meaning the period 1 January 2021 to 31 December 2021.

Category E of the Schedule to the Regulations addresses the amount of the levy contribution for investment funds, AIFMs, UCITS management companies and other investment fund service providers.



The text of the Regulations can be accessed [here](#).

### 13.3 ESMA Publishes Final Guidelines on MiFID II Suitability Requirements

On 23 September 2022, ESMA published its Final Report on Guidelines on certain aspects of the MiFID II suitability requirements (**Guidelines**).

The main amendments to the existing guidelines which were published by ESMA in 2018 have been to address the introduction of the obligation imposed on in-scope firms under Commission Delegated Regulation (EU) 2021/1253 to consider the sustainability preferences of clients when conducting their suitability assessments.

The Guidelines address the obligations to help clients understand the concept of sustainability preferences, to collect information from clients on their sustainability preferences, to assess such sustainability preferences and identify suitable products that fulfil the sustainability preferences of the client and to provide training to staff on sustainability topics and keep appropriate records of the sustainability preferences of each client. The Guidelines also incorporate some good and poor practices identified in ESMA's 2020 Common Supervisory Action (**CSA**) on suitability.

The Guidelines will be translated into the official languages of the European Union and published on ESMA's website. The publication of the translations will trigger a two-month period during which NCAs must notify ESMA on whether they comply or intend to comply with the Guidelines. The Guidelines will apply six months after the date of the publication on ESMA's website in all EU official languages.

The Final Report containing the Guidelines is accessible [here](#).

#### Key Action Points

Irish fund management companies with additional top-up MiFID permissions should review and update their compliance frameworks for suitability assessments to ensure that same comply with the revised ESMA guidelines once they begin to apply.

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.

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