



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | January to March 2023

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1 Legal & Regulatory

1.1 UCITS and AIFMD Update

Ireland

On 27 February 2023, the Central Bank of Ireland ("Central Bank") published [revised website guidance](#) on national provisions governing marketing requirement for UCITS and AIFs. The guidance notes contain updated information on the format and content of marketing material and the Central Bank's approach to verification of marketing communications.

On 24 March 2023, the Central Bank issued a [Dear CEO letter](#) following an EU-wide review of costs and fees in UCITS. While primarily related to UCITS (and directed to UCITS management companies) the Central Bank also expects that the findings are considered by AIFMs in relation to AIFs as well.

The main findings are:

- The costs and fees charged and the methodology for calculating these fees should be reviewed at least annually.
- All fund management companies should have structured pricing policies and procedures in place. This should include procedures for the design of cost and fees structures (as well as ongoing review).
- Fund management companies engaging in securities lending arrangements should ensure that fee arrangements are clearly disclosed in fund documents and are compliant with ESMA guidance.
- Fund management companies operating fixed operating expense models should ensure the differential (between the fixed overall fee and the running costs it covers) is minimised and the model should be reviewed annually.
- Non-discretionary investment advisor fees should be proportionate to the non-discretionary role being performed and would not, for example, be expected to be higher than the fee paid to the delegate investment manager.

The Central Bank requires all firms managing UCITS and AIFs to conduct a gap analysis of the findings / expectations and to put a plan in place by 30 September 2023 to address any gaps identified.

For more information see [Central Bank of Ireland Findings Following EU Review of Costs and Fees in UCITS](#).

EU

On 3 February 2023, the European Securities and Markets Authority ("ESMA") published updated [Q&As](#) on the application of the UCITS Directive adding a new Q&A 5e to Section I: General on issuer concentration.

On 9 February 2023, the European Parliament's Economic and Monetary Affairs Committee ("ECON") published the [report](#) it adopted on the European Commission's legislative proposal for a Directive amending AIFMD and the UCITS Directive relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by AIFs. The report contains a draft European Parliament legislative resolution which sets out amendments to the proposed Directive. On 28 March 2023, the Council of the EU published an [information note](#) containing a table comparing the negotiating positions taken by the European

Commission, the Council of the EU and the European Parliament. The note has been published as trilogue negotiations on the legislation taking place.

On 10 March 2023, ESMA published updated versions of:

- Its [Q&A](#) on the application of AIFMD adding a new section XVI on exemptions. It contains a new Question 1 on how the notion of "substantive direct or indirect holding" in Article 3(2) of AIFMD should be interpreted.
- Its [Q&A](#) on the application of the European Social Entrepreneurship Funds Regulation (EU) 346/2013 and the European Venture Capital Funds Regulation (EU) 345/2013 adding Question 5 on investment in another qualifying venture capital fund / qualifying social entrepreneurship fund.

1.2 Central Bank (Individual Accountability Framework) Act 2023 – SEAR

The [Central Bank \(Individual Accountability Framework\) Act 2023](#) was signed into law on 9 March 2023. The Act is not yet fully in force but some provisions came into effect on 19 April 2023. It amends current Central Bank legislation and significantly changes the regulation and supervision of regulated financial service providers and persons performing controlled functions and pre-approval controlled functions. It also introduces a Senior Executive Accountability Regime ("SEAR"), new types of business and conduct standards, and an enhanced fitness and probity regime. The Central Bank administrative sanctions procedure will also be amended to align with the new provisions.

The Central Bank, on 13 March 2023, [launched](#) a three-month consultation on key aspects of the implementation of the Individual Accountability Framework ("IAF"), including the publication of draft regulations and guidance.

The draft regulations and guidance aim to clarify the Central Bank's expectations for the implementation of three aspects of the framework: SEAR, the conduct standards and certain aspects of the enhancements to the fitness and probity regime.

For more information see [CP153: CBI Consults on Individual Accountability Framework as Act Becomes Law](#).

1.3 Central Bank Key Regulation and Supervision Priorities for 2023

On 16 February 2023, the Central Bank published a [Dear CEO Letter](#) addressing its key regulation and supervision priorities for 2023. On 15 March 2023, Central Bank deputy governors Derville Rowland and Sharon Donnery [spoke](#) to the Central Bank's 2023 regulatory and supervisory priorities at an event hosted by the Institute of Banking building on and reinforcing the February 2023 priorities letter. Core areas of focus included:

- Continuing to remain vigilant in assessing and managing the financial and operational resilience of firms;
- Enhancing the Central Bank's regulatory and supervisory approaches to mitigate risks from the changing financial system;
- Providing a clear, open and transparent authorisation process through active engagement with industry and other stakeholders;
- Progressing actions on the systemic risks generated by non-banks; in particular, advancing a macro-prudential framework for non-banks;
- Continuing to oversee the consolidation of the Irish banking sector;
- Supervising how firms are supporting borrowers to manage the challenges of the current economic environment (including issues related to affordability and arrears);
- Consulting and engaging on the review of the Consumer Protection Code and the Individual Accountability Framework, the objective of which is to enhance governance across the regulated sector;
- Continuing vigilance of the financial system, supervising firms' compliance with AML / CFT obligations, detecting and sanctioning market abuse, and enforcing financial sanctions;
- Implementing new EU regulations on DORA and markets in crypto assets ("MiCA"), as well as contributing to the development of other regulations, such as the review of the Payment Services Directive; and
- Strengthening the resilience of the financial system to climate change risks and its ability to support the transition to a climate-neutral economy, along with implementing SFDR.

1.4 Central Bank Securities Market Risk Outlook Report

On 2 March 2023, the Central Bank published its annual [Securities Markets Risk Outlook Report 2023 - Risks in a Rapidly Changing Environment](#) which highlights the key risk areas identified and the steps regulated financial service providers should take to effectively identify, mitigate and manage risks in the context of their particular business activities. The report sets out these risks under eight headings: (i) external risk environment; (ii) sustainable finance; (iii) market integrity; (iv) market conduct risk management; (v) delegation and outsourcing; (vi) cyber security; (vii) data quality; and (viii) digital innovation.

For more information see [Central Bank of Ireland: Key Areas of Supervisory Focus for 2023](#).

1.5 Central Bank Information Note on Liability Driven Investment Funds

On 29 March 2023, the Central Bank published an information note on [Liability Driven Investment Funds](#) which notes the statement by the Bank of England's Financial Policy Committee published on the same date.

Following the significant UK sovereign bonds (gilts) market turmoil in September 2022 and its associated impact on UK pension funds and liability-driven investment ("LDI") funds denominated in GBP, the Central Bank engaged closely with market participants and regulators in the UK and across Europe, including the CSSF and ESMA. This engagement culminated in a [letter](#) issued on 30

November 2022 which set out the minimum safeguards required to maintain the operational and financial resilience of these funds. All funds need to ensure they have adequate liquidity to meet their obligations in normal and stressed market conditions.

The Central Bank will continue to work closely with UK and EU regulators as well as international regulatory bodies to ensure all relevant investment and liquidity risks are managed effectively across the investment fund sector, including those in LDI funds. While this work is ongoing, the Central Bank expects the minimum safeguards highlighted in November's communication, in relation to the maintenance of a minimum yield buffer of 300-400 basis points, will continue to be observed.

1.6 Changes to the Fitness & Probity Application Process

The Central Bank Portal will be enhanced to facilitate the submission of applications to become a holder of a Pre-Approval Controlled function. Individual Questionnaires will no longer be submitted via the Online Reporting System ("ONR"), but will instead be submitted via the Central Bank Portal.

These changes went live on 24 April 2023 and provide applicants with an enhanced process for submitting applications. An [overview of the changes](#) to the system was published on 24 March 2023. ONR users will need to register to use the portal and manage any in-train IQ applications to move across to the new process. The new IQ came into effect as of 30 March 2023.

1.7 Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

On 6 April 2023, the Irish Minister for Finance published the [terms of reference](#) for the Department of Finance to produce a report on the "Funds Sector 2030: A Framework for Open, Resilient & Developing Markets". The report will look at a range of issues including the regimes for Real Estate Investment Trusts ("REITs"), Irish Real Estate Funds ("IREFs") and Section 110 companies. It will also examine international contexts, effects on employment and the economy and the wider taxation regime for funds, life assurance policies and other related investment products.

The Minister said in his statement that "Ireland is a global centre of excellence for the asset management and funds servicing and over many years this has been a driver of economic and employment growth. I am confident that a new framework will support long-term growth in this area and maintain a sustainable and resilient funds sector here".

It was announced the team would conclude its work in summer 2024. The Maples Group are already working with industry groups to engage in that process and would welcome any feedback from stakeholders.

1.8 Luxembourg to Modernise Fund Legislation

On 24 March 2023, the [bill of law n° 8183](#) ("Bill of Law") was introduced into the Luxembourg Parliament. It modernises and improves the various Luxembourg structuring options for investment funds and contains proposed changes to:

- The law of 23 July 2016 on reserved alternative investment funds, as amended ("[2016 Law](#)");
- The law of 12 July 2013 on alternative investment fund managers, as amended ("[2013 Law](#)");
- The law of 17 December 2010 relating to undertakings for collective investment, as amended ("[2010 Law](#)");
- The law of 13 February 2007 relating to specialised investment funds, as amended ("[2007 Law](#)"); and
- The law of 15 June 2004 relating to the investment company in risk capital, as amended ("[2004 Law](#)").

Some of the key enhancements include:

- Allowing undertakings for collective investment subject to Part II of the 2010 Law ("Part II UCIs") to adopt legal forms other than a public limited company ("SA") (i.e. a partnership limited by shares ("SCA"), a common limited partnership ("SCS"), a special limited partnership ("SCSp"), a limited liability company ("SARL") and a cooperative company organised as a public limited company ("SCoSA").
- Amending the definition of 'well-informed investor' as set out in each of the SICAR Law, SIF Law and RAIF Law by lowering the investment threshold from €125,000 to €100,000 to align with the European standard.
- Extending the period within which the minimum legal capital must be reached: (i) from 12 to 24 months for reserved alternative investment funds ("RAIFs"), specialised investment funds ("SIFs") and investment companies in risk capital ("SICARs"); and (ii) from six to 12 months for Part II UCIs.
- Removing the requirement (under article 34 of the RAIF Law) for a Luxembourg notary to acknowledge the establishment of a RAIF where it has been incorporated by notarial deed (i.e. those adopting the legal form of a SA, SARL or SCA).
- Clarifying the liquidation rules extending the voluntary liquidation regime to UCITS management companies and AIFMs.
- Permitting AIFMs to appoint tied agents.
- Permitting closed-ended Part II UCI SICAVs and FCPs to issue shares / units at an issue price which can be freely determined in the constitutive documents of the relevant Part II UCI thereby removing the requirement that the issue price be based on net asset value ("NAV").
- Requiring a portfolio manager of a SICAR to obtain authorisation from the Commission de Surveillance du Secteur Financier ("CSSF").
- Clarifying the term "*dirigeants*" in the SIF Law and the SICAR Law.
- Aligning the SICAR Law to the SIF Law by:
 - harmonising the definition of 'well-informed investor';
 - including an obligation for SICARs to have means in place to ensure the verification of the status of well-informed investors;
 - allowing for the suspension of issuance of units / interests on the occurrence of a SICAR liquidation event; and
 - allowing for the CSSF to withdraw authorisation of one or more compartments of a SICAR.

The Bill of Law also proposes to exempt UCITS and Part II UCIs reserved to [pan-European Personal Pension Product](#) investors and ELTIFs from the annual subscription tax (*taxe d'abonnement*). It will now go through the legislative process.

1.9 Sustainable Finance Update

On 1 January 2023, the SFDR Delegated Regulation under the Sustainable Finance Disclosure Regulation ([EU](#) 2019/2088 ("SFDR")) came into effect (see further below). Among other things, these measures require affected funds to make amendments to their fund documentation, including their prospectuses.

Ireland

On 20 February 2023, the Central Bank issued a notice: '[Process clarifications for UCITS and AIFs pre-contractual documentation updates in relation to the Commission Delegated Regulation \(EU\)](#)

[2023/363](#)'. In addition to filing updated documentation, a 'Responsible Person' in a UCITS or AIF will be required to certify that "the amendments made are in accordance with:

- the Commission Delegated Regulation (EU) 2023/363;
- SFDR Level 1, SFDR Level 2 and / or the Taxonomy Regulation; and
- any amendments made to the investment policy / strategy are only to allow consistency with the disclosure changes referenced above."

For existing funds, while there is no definitive timeline provided for the revised annexes to be used, the clarification paper states that the Central Bank's expectation is that documents will be updated to reflect the new annexes "as soon as possible and at the earliest available opportunity".

Luxembourg

On 1 February 2023 the CSSF launched its first SFDR and Taxonomy Regulation data collection exercise, which focused on the collection of information on the organisational arrangements of Luxembourg investment fund managers ("IFMs"). Completed questionnaires had to be filed on the CSSF's [eDesk portal](#) ("eDesk Portal") by 2 March 2023. IFMs are responsible for ensuring all information provided remains up-to-date.

On 8 March 2023, the CSSF announced the entry into force of the Amended RTS (as defined below). It notified financial market participants ("FMPs") of the introduction of nuclear and gas disclosures into the SFDR RTS and the requirement to use the revised templates. In addition, it introduced a streamlined review process where changes to the prospectus / private placement memorandum are limited to the use of the new templates. In order to benefit from this, FMPs must confirm in the application file submitted to the CSSF (i) the use of new templates; and (ii) that no other changes have been made to the relevant document.

On 13 March 2023, the CSSF published an updated [SFDR FAQ](#) with three new questions and answers on:

- the use of ESG and / or sustainability-related terminology in fund names (question 7);
- the methodology used to define sustainable investments (question 8); and
- efficient portfolio management techniques (question 9).

For more information, see [CSSF Updates SFDR FAQ](#).

On 24 March 2023, the CSSF launched a second SFDR and Taxonomy Regulation data collection exercise, which focuses on the information in the pre-contractual disclosure documents. The deadline for submission of the initial questionnaire is 15 June 2023. It is expected that a data collection exercise will soon be launched to collect information in the principal adverse impact statements and the periodic disclosure templates.

EU

The European Commission Director General FISMA on 9 February 2023 issued its [final report](#) on the feasibility, minimum standards and transparency requirements for an EU ESG Benchmark. It identifies possible approaches for minimum standards for an EU ESG Benchmark, aiming to create standardisation and transparency in ESG indexes taking into account the ESG regulatory framework in the EU and internationally.

On 20 February 2023, Commission Delegated Regulation ([EU](#)) 2023/363 ("Amended RTS") came into force. It amends and corrects the regulatory technical standards ("RTS") in Delegated Regulation (EU) 2022/1288 (SFDR RTS which came into force on 1 January 2023) on the content and presentation of information in relation to disclosures in pre-contractual documents and periodic

reports for financial products investing in environmentally sustainable economic activities. Among other things, the Delegated Regulation incorporates nuclear and gas disclosures into the SFDR RTS.

1.10 PRIIPs KID New Filing Requirements

From 1 January 2023, UCITS management companies are required to produce PRIIPs KIDs for all of their sub-funds distributed to EEA retail investors. The UCITS KID was therefore replaced by a PRIIPS KID for EEA retail investors.

On 24 March 2023, the Central Bank updated its [guidance](#) on the filing and submission requirements for PRIIPs KIDs for UCITS. It clarifies the process for filing PRIIPs KIDs for UCITS seeking authorisation from 1 January 2023 and for UCITS authorised prior to January 2023. On 24 March 2023, the Central Bank also published the [38th edition](#) of its UCITS Q&A amending three Q&As (ID 1107, 1108, 1109) concerning PRIIPs filing requirements. It also features two new Q&As (ID 1110 and 1111) on the filing requirements for PRIIPs KIDs of UCITS which intend to market to different types of investors.

1.11 AML / CFT Developments

Ireland

On 20 January 2023, the Minister for Justice issued [guidelines](#) under section 37(12) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 clarifying those functions in the State that may be considered to be prominent public functions for the purposes of the Act. This will assist firms in identifying domestic, politically-exposed persons when conducting risk assessments.

Luxembourg

On 11 January 2023, the CSSF published the [results](#) of a thematic review it carried out on the anti-money laundering / counter terrorism financing ("AML / CFT") controls applied by IFMs. The review focused on the AML / CFT controls applied by IFMs when providing Trust and Company Service Provider ("TCSP") activities, such as the provision of registered office and directorship services. The CSSF notes a number of best practices which should be adopted by IFMs providing TCSP services and reminds IFMs to capture TCSP activity in their money laundering / terrorist financing risk appetite statement, compliance monitoring plan and the annual AML report.

On 8 February 2023, the CSSF [issued](#) a press release following a conference it held for specialised professionals of the financial sector ("PFS") highlighting the sector's key AML / CFT issues. It summarises the main takeaways, focusing on issues such as:

- risk appetite statements, AML / CFT risk self-assessments and the report of the AML / CFT compliance officer;
- the establishment of an AML / CFT working group for specialised PFS;
- the obligations around the Register of fiducies and trusts;
- Luxembourg's vertical risk assessment on legal persons and legal arrangements, and the separate vertical risk assessment on terrorist financing; and
- the presentation of Luxembourg's financial intelligence unit for the reception of suspicious transaction and suspicious activity reports, the Cellule de Renseignement Financier.

In a [circular letter](#) issued on 7 February 2023, the CSSF clarified that a completed survey on the fight against money laundering and terrorist financing must be filed through the eDesk Portal by 31 March 2023. It must be completed by the compliance officer responsible for the control of compliance with the professional obligations ("RC"), the person responsible for compliance with the professional obligations ("RR") or another employee of the in-scope entity or third party. Where the latter is appointed to file the survey, the RR or the RC remain ultimately responsible for the filing. The CSSF

also reminded all in-scope entities of their obligations under the law of 12 November 2004 (as amended) on the fight against money laundering and terrorist financing and warned that any failure to submit the survey may result in administrative sanctions.

In March 2023, the Luxembourg Registration Duties, Estates and VAT Authority ("AED"), in its role as AML supervisory authority for RAIFs and other unregulated Luxembourg AIFs, published an updated [guide](#) on professional obligations with regard to the fight against money laundering and terrorist financing for RAIFs. It is indicative and describes the minimum requirements to be complied with by RAIFs. The AED has explicitly provided that RAIFs must adapt their internal AML / CFT procedures according to their size, their activity and the nature of their investors.

EU and International

On 10 March 2023, the Financial Action Task Force ("FATF") published [updated guidance](#) on recommendation 24 on the transparency and beneficial ownership of legal persons (R.24) and a revised version of the [FATF recommendations](#) to reflect revisions to recommendation 25 on the transparency and beneficial ownership of legal arrangements (R.25) and its interpretative note (INR.25).

The R.24 guidance is intended to help countries:

- Identify, design and implement measures to ensure that beneficial ownership information is held by a public authority or body functioning as a beneficial ownership registry, or an alternative mechanism that enables efficient access to the information.
- Assess and mitigate the money laundering and terrorist financing risks associated with foreign companies to which their countries are exposed.

FATF also revised the definitions in the glossary to its recommendations of "beneficial ownership", "beneficiary" and "legal arrangements" to provide more clarity on legal arrangements. FATF plans to work on guidance to help countries implement the revised R.25 requirements.

On 14 March 2023, FATF published a [report](#) on countering ransomware financing. In it, the FATF analyses the methods used to carry out ransomware attacks and how payments are laundered. Criminals are almost exclusively using virtual assets (cryptoassets) and have easy access to virtual asset service providers around the world. To mitigate this, the FATF advises that, in many cases, financial institutions require proxy indicators to identify potential ransomware payments and sets out actions that countries can take to more effectively disrupt ransomware-related money laundering.

On 16 March 2023, Commission Delegated Regulation ([EU](#)) 2023/410, which amends Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries with strategic AML / CTF deficiencies under the Fourth Money Laundering Directive (EU) 2015/849 ("MLD4"), came into force. It adds the following third countries to the list:

- Democratic Republic of the Congo
- Gibraltar
- Mozambique
- Tanzania
- The United Arab Emirates

Nicaragua, Pakistan and Zimbabwe were removed from the list.

On 28 March 2023, the European Parliament [announced](#) that ECON and its Committee on Civil Liberties, Justice and Home Affairs MEPs have adopted their position on the:

- Proposed AML Regulation with provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as crypto-assets, and new entities, such as crowdfunding platforms.
- Proposed Sixth Money Laundering Directive ("MLD6") with provisions on supervision and financial intelligence units, as well as on access for competent authorities to necessary and reliable information (e.g. beneficial ownership registers and assets stored in free zones). In particular, following the latest European Court of Justice [ruling](#) (which restricted public access to beneficial ownership information), MEPs decided that persons with legitimate interest (such as journalists and other medias, civil society organisations and higher education institutions) should be able to access the register, including the interconnected central registers. The legitimate interest should apply without any discrimination based on nationality, country of residence or of establishment.
- Proposed Regulation establishing the Anti-Money Laundering Authority ("AMLA") with supervisory and investigative powers.

The next step is for the Parliament to start negotiations with the Council of the EU after adopting its position in April 2023.

The EBA, on 29 March 2023, launched a [consultation](#) on amendments to its guidelines on risk-based AML / CFT supervision. The proposed changes extend the scope of these guidelines to AML / CFT supervisors of crypto-asset service providers ("CASPs"). It explains that, since the provision of cryptoasset services is a cross-border activity, it is important that the same standards apply wherever CASPs operate in the single market. The consultation runs until 29 June 2023.

On 31 March 2023, the EBA published [two final reports](#) on guidelines produced under Articles 17 and 18(4) of MLD4 to tackle unwarranted derisking and safeguard access to financial services to vulnerable customers.

The first set of guidelines consist of an annex to the existing risk factors guidelines and lists factors that firms should consider when assessing the money laundering and terrorist financing risks associated with customers who are not-for-profit organisations. The [second set of guidelines](#) complements the risk factors guidelines and tackles the effective management of money laundering and terrorist financing risks by firms when providing access to financial services. These guidelines clarify the interaction between access to financial services and firms' AML and CFT obligations, including situations where customers have legitimate reasons to be unable to satisfy CDD requirements. In addition, they set out the steps firms should take when considering whether to refuse or terminate a business relationship with a customer based on AML or CTF risk or compliance grounds.

Both guidelines will be translated into the official EU languages, published on the EBA website and will apply three months after publication.

1.12 IFR and IFD Update

The Investment Firms Directive ([EU](#) 2019/2034 ("IFD")) and the Investment Firms Regulation ([EU](#) 2019/2033 ("IFR")) introduced a new prudential regime for MiFID investment firms across the EU that were subject to the Capital Requirements Regulation ([EU](#) 575/2013) and the CRD IV Directive.

Ireland

On 3 February 2023, the Central Bank published an updated version of the notice on the [Implementation of Competent Authority Discretions in the IFD Regulations and the IFR](#) to take account of the:

- Publication of updated implementation notice for credit institutions

- Finalisation of transposition of IFD
- Publication of Commission Delegated Regulations and EBA guidelines under the IFD / IFR Roadmap for investment firms
- Notification that Central Bank permission is required before capital contributions may be recognised as CET1 capital

EU

On 1 February 2023, the following implementing and delegated regulations came into force:

- [Commission Implementing Regulation](#) laying down implementing technical standards ("ITS") for the application of IFD with regard to standard forms, templates and procedures for the information sharing between the competent authorities of home and host member states, and related Annex.
- [Commission Delegated Regulation](#) supplementing IFD with RTS specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host member states.
- [Commission Delegated Regulation](#) supplementing IFD with RTS specifying the conditions under which colleges of supervisors exercise their tasks.

On 20 February 2023, the European Commission published a [call for advice](#) to the EBA and ESMA to provide an evaluation on this prudential framework that has applied since June 2021. Under Article 60 of IFR and Article 66 of IFD, the Commission must submit, by 26 June 2024, reports to the European Parliament and the Council of the EU that it has consulted on with the EBA and ESMA.

In particular, the call for advice covers:

- The categorisation of investment firms
- Interactions of the regime with the Capital Requirements Regulation and the CRD IV Directive
- Considerations relating to ESG risks, focusing on climate-related risks
- How to future-proof the IFR and IFD regime
- Specific considerations on commodity and emission allowance dealers and energy firms

1.13 ELTIF Update

On 20 March 2023, Regulation [\(EU\) 2023/606](#), amending the European Long-Term Investment Funds Regulation (EU) 2015/760 ("ELTIF Regulation"), was published in the Official Journal of the EU. It entered into force on 9 April 2023 and will apply across the EU from 10 January 2024. The amendments are aimed at making ELTIFs more appealing to investors as a fund available for long-term investments. The key changes include:

- Much broader scope of eligible investments
- Less prescriptive diversification requirements
- Simplified distribution rules

Existing ELTIFs will be deemed to comply with the amending Regulation for five years, although existing ELTIFs can choose to be subject to the amending Regulation by notifying the fund's competent authority. This is because the amending Regulation states ELTIFs authorised under and complying with the ELTIF Regulation before 10 January 2024 will be deemed to comply with the amending Regulation until 11 January 2029. ELTIFs that do not raise additional capital will also be deemed to comply with it.

For more information see [ELTIF 2.0 – Enhancements and New Opportunities](#).

1.14 Digital Operational Resilience Regulation – DORA

Digital operational resilience refers to the ability of financial institutions to ensure they can withstand all types of ICT-related disruptions and threats, including cyber-attacks. On 16 January 2023, the following entered into force:

- Regulation [\(EU\) 2022/2554](#) on digital operational resilience for the financial sector ("DORA")
- Directive [\(EU\) 2022/2556](#) on digital operational resilience for the financial sector ("DORA Amending Directive")

DORA will establish a harmonised and comprehensive digital operational resilience framework across the whole EU financial sector by requiring a wide range of financial entities in the banking, insurance and investment sectors to manage their ICT risks in a robust way. It will also streamline the existing patchwork of relevant provisions in EU financial services legislation.

DORA will apply from 17 January 2025 and member states are required to apply measures implementing the DORA Amending Directive from the same date.

For more information see [DORA: New EU Operational Resilience Regime for the Financial Sector](#).

1.15 New CSSF Fees

The [Grand-Ducal Regulation of 23 December 2022](#) entered into force on 1 January 2023 and sets out the fees to be levied by the CSSF to cover its staff, financial and operating costs as Luxembourg's financial sector supervisory authority. The vast majority will be increased and new fees will be introduced.

1.16 New CSSF Notification Templates

On 19 January 2023, the CSSF published two new notification templates which need to be submitted for the following applications:

- New AIFM registrations subject to the 2013 Law where the AIFM manages AIFs not subject to authorisation and prudential supervision by a Luxembourg authority.
- New AIFM registrations subject to the [European Venture Capital Funds Regulation](#) or the [European Social Entrepreneurship Funds Regulation](#).
- New IFM authorisations subject to the [law of 17 December 2010](#) relating to undertakings for collective investment, as amended and / or subject to chapter 2 of the 2013 Law.
- eExisting IFMs applying for an extension of their activities with respect to additional investment strategies, one or more MiFID services or the activity of central administration and / or registrar and transfer agent. This template must also be used for an acquisition of a qualifying holding, the establishment of one or more branches and / or a change of the reference shareholder.

1.17 CSSF Working Paper on Liquidity Stress Testing

On 9 March 2023, the CSSF published a [paper](#) on "Liquidity Stress Test for Luxembourg Investment Funds: the Time to Liquidation Approach" which presents (i) the key characteristics of a liquidity stress testing ("LST") framework; (ii) the scope of the LST exercise; and (iii) the output of the LST framework. Some key findings include:

- 83% of funds could meet macro-based redemption shocks within two days and 96% within five days.
- High-yield bond funds would take more time for liquidation: only 87% of these funds could meet macro-based redemption shocks within five days.

- The price impact of the initial macro-based redemption shock (contagion channel) would amount to a market-wide impact (loss) of approximately €12 billion (compared to a market size of around €5 trillion).
- Second-round effects would have a relatively moderate impact.

1.18 MMFR Stress Testing Guidelines and Consultation

On 31 January 2023, ESMA published a [consultation](#) reviewing the methodology included in the guidelines on stress test scenarios under the Regulation on money market funds (EU) 2017/1131 ("MMFR"). The proposed revisions relate to the:

- Liquidity Scenario: The proposals aim to better consider the interaction between liquidity and redemption pressures, with significant tightening of the parameters of the liquidity and redemption scenarios.
- Macro Scenario: The proposals aim to better capture the macroprudential impact of the scenario by including assumptions on the underlying markets and other market participants.

The consultation also sets out ESMA's considerations on a potential climate risk scenario. The consultation closes on 28 April 2023 and ESMA intends to publish the final guidelines in Q4 2023.

On 24 March 2023, the Central Bank published a [notice of intention](#) in relation to the ESMA "Guidelines on Stress Test Scenarios under the MMF Regulation" ("updated guidelines"). It sets out that the Central Bank expects full compliance with the updated guidelines from 27 March 2023. The Central Bank will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all managers of MMFs adhere to them.

On 27 March 2023 the updated [guidelines](#) came into force. They apply to competent authorities, MMFs and managers of MMFs, and aim to ensure common, uniformed and consistent application of Article 28 of the MMFR Regulation which requires each MMF have sound stress testing processes that identify possible events or future changes in economic conditions.

1.19 MiFID II / MiFIR Update

Ireland

On 3 March 2023, the Central Bank clarified two aspects of its [April 2022 Dear CEO letter](#) in an updated [Dear CEO letter](#) to investment firms on MiFID structured retail products. These relate to how the warnings on use of a decrement index should appear and the presentation of back-testing.

On 29 March 2023, the Central Bank published a Dear CEO letter on [Targeted Reviews on Control Frameworks and Risk Appetite Statements in MiFID Investment Firms and Market Operators](#). It expects all investment firms to consider the letter and review their risk and compliance control frameworks, including their risk appetite statements, against the good practices and findings detailed in the appendices.

UCITS management companies and AIFMs with MiFID top-up permissions were not specifically referenced as within scope in the letter and were not included in the review. However, the letter does not affirmatively state they are excluded from scope.

EU

On 16 January 2023, ESMA [announced](#) the launch of a 2023 common supervisory action ("CSA") with national competent authorities ("NCAs") on the application of the disclosure rules under the [Markets in Financial Instruments Directive \(EU\) 2014/65](#) ("MiFID II"). The aim is to assess the

application by investment firms and credit institutions of the MiFID II requirements on marketing communications across the EU.

On 17 January 2023, the European Commission adopted:

- A [draft Delegated Regulation](#) amending and correcting the RTS in Delegated Regulation (EU) 2017/587 on certain transparency requirements applicable to transactions in equity instruments (RTS 1).
- A [draft Delegated Regulation](#) amending the RTS in Delegated Regulation (EU) 2017/583 on certain transparency requirements applicable to transactions in non-equity instruments (RTS 2).

Both RTS 1 and RTS 2 were made under the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR"). The amendments relate to certain reporting fields, flags and transitional provisions. The Council of the EU and the European Parliament will now scrutinise them.

On 1 February 2023, the European Commission adopted a Regulation amending Delegated Regulation (EU) 2017/588 (RTS 11), which contains RTS supplementing MiFID II. RTS 11 sets out the tick size regime for shares, depository receipts and ETFs, including provisions on the calculation of the applicable tick size based on the average daily number of transactions ("ADNT"). The proposed amendments specify that the calculations for the ADNT apply as at the first Monday of April in each year, rather than the current 1 April. The aim is to align the application date of calculations in RTS 11 with the application date of calculations in Delegated Regulation (EU) 2017/587 (RTS 1).

On 2 February 2023, ESMA has published a [final report](#) with its opinion on the trading venue perimeter under MiFID II. It gives guidance on when certain systems and facilities qualify as unilateral and therefore should seek authorisation as a trading venue. ESMA expects NCAs to ensure that firms assess their systems against the opinion.

On 8 March 2023, ECON published the [report](#) it has adopted on the proposed regulation amending MiFIR. ECON voted to adopt the report at its meeting on 1 March 2023, together with a [report](#) on the proposed Directive amending MiFID II.

On 27 March 2023 ESMA published its [final report](#) on guidelines on MiFID II product governance guidelines. The amendments relate to the:

- Specification of any sustainability-related objectives a product is compatible with.
- Practice of identifying a target market per cluster of products instead of per individual product.
- Determination of a compatible distribution strategy where a distributor considers a more complex product can be distributed under non-advised sales.
- Periodic review of products including the application of the proportionality principle.

These guidelines will be translated and published on ESMA's website and will apply two months after publication.

On 28 March 2023 ESMA, published a [statement](#) on investor protection concerns raised by derivatives on fractions of shares (addressed to firms and NCAs). It clarifies the application of certain investor protection requirements established under MiFID II. It also notes where derivatives on fractions of shares are PRIIPs, firms need to provide retail clients with a PRIIPs KID.

On 28 March 2023, ESMA published a [final report](#) which sets out proposed ITS amending Implementing Regulation (EU) 2017/980 laying down ITS regarding standard forms, templates and procedures for co-operation in supervisory activities, for on-site verifications and investigations and

exchange of information between NCAs under MiFID II. It will now submit them to the European Commission for endorsement.

On 30 March 2023, ESMA published a [supervisory briefing](#) on firms offering copy trading services with guidance on the qualification of copy trading services as an investment service and supervisory expectations with regard to MiFID II requirements on:

- information requirements (including on marketing communications and costs and charges);
- product governance;
- suitability and appropriateness assessment;
- remuneration and inducement; and
- qualifications of traders whose trades are being copied.

On 30 March 2023, ESMA published a [statement](#) on the application of the DTO under Article 28 of MiFIR to certain credit default swaps ("CDS"). In order to support the orderly migration of positions and mitigate the potential risks, and for the sole purpose of migrating pre-existing positions in ICE Clear Europe until 31 October 2023 to another CCP, ESMA states it expects NCAs not to prioritise their supervisory actions in relation to the DTO for transactions in certain index CDSs, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

On 31 March 2023, ESMA's January 2023 [consultation](#) on a manual on post-trade transparency under MiFIR closed.

Over the quarter, ESMA also updated its MiFIR [Q&As](#) on market structures topics, its [Q&As](#) on data reporting and its MiFID II and MiFIR [Q&As](#) on transparency topics.

1.20 Macprudential Supervision of Investment Funds – ESMA

On 21 March 2023, ESMA published a [speech](#) by Verena Ross, ESMA Chair, in which she focuses on the macroprudential supervision of investment funds. It includes details about what ESMA expects of market participants, including:

- Risks are likely to come from sudden and unexpected shocks, in addition to existing vulnerabilities, with interest rate risks being specifically highlighted. Therefore, it is important to address vulnerabilities in the investment management sector and to identify the possible channels of contagion to the rest of the financial system.
- Supervisory work continues to highlight issues with liquidity risk management. ESMA expects managers to monitor the alignment of their funds' investment strategy, their liquidity profile and their redemption policy.
- Being prepared for the active monitoring of leverage risk.

1.21 Benchmarks Regulation Update

On 2 March 2023, the European Commission published a [call for evidence](#) on the scope and third-country regime of the Benchmarks Regulation (EU) 2016/1011 ("BMR") which closes on 15 June 2023. The two aims are to:

- ensure continued access to non-EU benchmarks for EU businesses and investors; and
- promote EU benchmark labels as an open standard under EU supervision.

On 31 March 2023, ESMA published updated [Q&As](#) on the BMR and updated Q&A 5.15 on the meaning of "readily available" data under Article 3(1)(8) of the BMR.

1.22 Revised Central Bank Client Assets Regulations

On 3 February 2023, the Central Bank [published](#) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investment Firms Regulation 2023 containing amendments to the Client Asset Requirements, which are in part 6. The Central Bank has also published an [Addendum to its Guidance](#) on revised client asset requirements, addressing transfers of business.

The revised Regulations apply to investment firms from 1 July 2023 and credit institutions from 1 January 2024. "Investment firms" include MiFID investment firms, investment business firms and UCITS management companies / AIFMs with MiFID 'top-up' permissions (but only in respect of those 'top-up' activities).

The protection of client assets is a key priority for the Central Bank and the enhancements aim to ensure that client assets held by investment firms and credit institutions remain appropriately safeguarded.

The revised regulations contain new provisions on:

- reconciliation and calculation requirements for client financial instruments;
- transfer of business requirements;
- reporting requirements and client disclosures for in scope credit institutions;
- prime brokerage services; and
- title transfer collateral arrangements.

1.23 EMIR Update

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

On 1 February 2023, ESMA published its [final report](#) which sets out proposed regulatory technical standards ("RTS") on the clearing obligation ("CO") and the derivative trading obligation ("DTO") in view of the 2022 status of the benchmark transition. The work is part of a transition away from EONIA and LIBOR and to new risk-free rates. The RTS on CO will enter into force after publication. In relation to the RTS on DTO, in the light of feedback received, ESMA recommends the application date should coincide with the MiFIR review dates.

The draft RTS have been submitted to the European Commission for endorsement.

Two amending Delegated Regulations containing RTS that extend the temporary exemptions regime for intragroup contracts for three years under EMIR, entered into force on 14 February 2023:

- [Commission Delegated Regulation \(EU\) 2023/314](#) extends the deferred date for application of the margin requirements for intragroup transactions to 30 June 2025.
- [Commission Delegated Regulation \(EU\) 2023/315](#) extends the deferred date for application of the clearing obligation for intragroup transactions to 30 June 2025.

On 21 March 2023, the ESRB published a [letter](#) to the European Parliament and the Council on amending EMIR proposal intended to mitigate excessive exposures to CCPs and improve the efficiency of EU clearing markets ("EMIR 3"). It recommends incorporating a number of elements to make the financial system safer, including:

- improving data quality and filling data gaps;

- ensuring the current temporary energy market exemption is not permanent or applying on a permanent basis strict cumulative conditions about the acceptance of uncollateralised bank guarantees;
- permitting the non-objection procedure where settlement in a new EU currency would be added to a class of financial instruments already covered by a CCP's authorisation; and
- clarifying the interaction between the joint monitoring mechanism and the existing supervisory framework.

On 28 March 2023, ESMA launched a [consultation](#) on the amendments to guidelines on position calculation to ensure that TRs calculate positions in derivatives in a harmonised and consistent manner in accordance with Article 80(4) of EMIR, as amended by technical standards introduced by the EMIR Refit Regulation (which closes on 9 May 2023).

On 28 March 2023, ESMA launched a consultation on amendments to its guidelines for TRs on position calculation under EMIR.

On 31 March 2023, ESMA published updated [Q&As](#) on the implementation of EMIR and added a new question on the inclusion of derivatives in the trade state report. It has also amended Q&As on:

- Reporting to TRs: Table of fields (Article 9 of EMIR)
- Exchange traded derivatives: which parties have to report (Article 9 of EMIR)

1.24 Whistleblowing Law Changes – Ireland

The [Protected Disclosures \(Amendment\) Act 2022](#) came into force on 1 January 2023 and strengthens whistleblowers' protections under the Protected Disclosures Act 2014. It also imposes new obligations on employers and others who receive protected disclosures. The Act requires all private sector organisations with 250 or more employees to establish formal procedures for the making of protected disclosures, although it will eventually apply (from 17 December 2023) to organisations with between 50 and 249 employees. However, certain employers, including those in the public sector and certain financial services firms regardless of number of employees, must comply with the Act from 1 January 2023.

For more information see [Year-End Deadline for Regulated Entities' Whistleblowing Procedures](#).

1.25 EU Securitisation Regulation

Following a public consultation, the EBA published a final report on 14 February 2023 on draft RTS relating to the Securitisation Regulation ([EU 2017/2402](#)) specifying the criteria for homogeneity in the underlying exposures for all simple, transparent and standardised ("STS") securitisations, including on-balance sheet securitisations. The final draft RTS will amend Delegated Regulation (EU) 2019/1851 ("Existing RTS"), specifying criteria for homogeneity for asset-backed commercial paper ("ABCP") and non-ABCP securitisations, and will apply to all STS securitisations, including ABCP, non-ABCP and on-balance sheet securitisations. The final draft RTS carry over the provisions on homogeneity in the Existing RTS with some modifications. They have been submitted to the Commission for endorsement.

On 17 February 2023, the Joint Committee of the ESAs updated their compendium of [Q&As](#) on the Securitisation Regulation. Eleven new questions have been added, including questions on:

- Early amortisation provisions in transaction documentation
- Step-up margins for investors upon loss of a securitisation's STS status
- Homogeneity of securitised assets
- Reporting templates for project finance securitisations

- The application of EMIR to securitisation transactions

1.26 CSDR Update

On 15 February 2023, ESMA, published its [peer review report](#) on the national supervision of central securities depositories ("CSDs") providing cross-border services or participating in interoperable links. It assessed six NCAs in respect of how they supervise CSDs, which make use of the freedom to provide services in another Member State. The exercise included onsite visits to the CSSF (Luxembourg), FKTK (Latvia) and NBB (Belgium) to gain a deeper understanding of how these NCAs supervise the cross-border activities of CSDs.

On 1 March 2023, ECON [announced](#) the adoption of a [draft report](#) on the proposal for a Regulation amending the Central Securities Depositories Regulation (EU) 909/2014 ("CSDR") which it published on 8 March 2023. ECON's changes to the proposal include:

- Deterrent and proportionate cash penalties when a party to a transaction does not deliver a security or funds on time. Mandatory buy-in rules should apply only as a last resort measure.
- The recognition regime for CSDs established in a third country should be expanded to cover securities settlement services.
- Supervisory colleges should be established whenever a CSD is of substantial importance in more than one member state, and ESMA should have a stronger role in supervisory colleges.
- CSDs not authorised as banks should be able to offer a sufficient amount of arranged foreign currency settlement through a bank account. The EBA should be mandated to draft risk mitigating requirements.

On 13 March 2023, ESMA published updated [Q&As](#) on implementation of CSDR. It added a new Q&A on settlement discipline in Part III relating to partial settlement functionality.

1.27 Irish Investment Funds Statistics: Q4 2022

The main points to note in the Central Bank's [Q4 2022 statistics](#) issued in March 2023 are as follows:

- The NAVs of Irish-resident funds ("IFs") increased by end 2022, reaching €3,653 billion, experiencing large inflows for the first time in 2022. The total NAV of IFs increased by €20 billion during the fourth quarter.
- Equity, real estate, MMFs and other funds showed NAV increases during the quarter, driven mostly by investor inflows. More specifically, MMFs recorded significant transaction increases of €78 billion. Negative revaluations, amounting to €81 billion in total, were seen across most fund types, due to US dollar depreciation.
- Mixed and hedge funds showed the largest declines of 22% each during the quarter. The decrease in hedge funds was driven by outflows (€8 billion) and negative revaluations (€9 billion) mostly due to US dollar holdings; while decreases in mixed funds was primarily due to outflows (€11 billion) in UK and US holdings.

1.28 Luxembourg Undertakings for Collective Investment Statistics

The main points to note in the CSSF's [February 2023](#) update for regulated Luxembourg funds are as follows:

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs (regulated Luxembourg investment funds) amounted to €5,164.353 billion as at 28 February 2023.
- The number of CSSF-regulated Luxembourg investment funds active in the markets totals 3,348.

- Of the 3,348 active Luxembourg investment funds, 2,189 entities adopted an umbrella structure and together have a total of 13,109 sub-funds. The remaining 1,159 are structured as stand-alone funds.
- As at February 2023, there were a total of 14,268 fund units.
- During February 2023, there were more subscriptions than redemptions in equity funds and fixed-income funds.

In addition, the number of Luxembourg RAIFs reached 2,228 as of 31 March 2023.

2 Tax

Ireland

2.1 VAT on Depositary Services and Global Custody Services

In May 2022, the Revenue Commissioners ("Revenue") published a new Tax and Duty Manual ("TDM") on the VAT treatment of depositary services and global custody services provided to Irish investment funds. The new TDM states that services consisting of a pure oversight role undertaken by a depositary is subject to the standard rate of VAT. However, Revenue accept that depositaries typically provide a package of services (described as global custody services), which include taxable elements and exempt elements. In such circumstances, oversight can constitute part of a composite supply of VAT exempt financial services where the taxable elements are incidental.

The Irish Funds VAT working group issued a discussion paper on the TDM in September 2022 which was shared with Revenue. There were concerns as to whether Revenue determination of VAT exempt or VAT taxable status for global custody and depositary services would be based solely on the fees attributable to each component element, which could fluctuate and may not give an accurate representation of the correct VAT status and nature of the service or services provided over the duration of the contract.

Revenue reconfirmed in a letter on 7 March 2023 to Irish Funds that a VAT exemption can apply to global custody services (which includes taxable elements such as physical safe-keeping and oversight) where the "principal" elements of the global custody service are VAT exempt financial services. This will be a question of fact in each case based on the services supplied. Revenue have also confirmed the "principal component" in a global custody service is not to be determined exclusively by reference to the respective value of fees charged for the global custody and oversight components. Revenue confirm the principal component is a question of fact in each case, based on the nature of the services supplied.

Revenue have emphasised the importance of contractual arrangements as evidencing nature of the services provided in determining the appropriate VAT treatment to apply. Where clients are entering into new depositary arrangements or amendments are being made to existing arrangements, it will be important to review the contractual arrangements from a VAT perspective. The Maples Group Tax team is ready to assist in reviewing any contracts and discussing concerns with clients.

EU

2.2 EU Global Minimum Tax Directive – Pillar 2

The Irish Minister for Finance published a [feedback statement](#) on 31 March 2023 on the transposition of the Global Minimum Tax Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU into Irish law. The Directive implements the OECD Pillar Two Global Minimum Tax ("GloBE") Model Rules across the EU. EU Member States, including Ireland and Luxembourg, must enact the Directive into national law with effect from 31 December 2023 (certain rules will be applicable from 31 December 2024).

The Directive will apply to large groups with an EU connection and an annual turnover of at least €750 million. The objective is to ensure that groups within scope pay a minimum "effective tax rate" ("ETR") of 15% on the income arising in each of the countries across the world in which they operate. This is achieved, broadly, by taxing an EU-based entity in the group with an additional top up tax in respect of profits arising elsewhere in the world which are subject to an ETR of less than 15%.

There are a number of important safe harbours in the Directive aimed at investment fund structures. For example, there are relieving provisions for certain parent entity "investment funds" with non-connected investors, for "investment entities" and for "flow-through entities" as defined.

The Maples Group are working with clients ahead of the 31 December 2023 deadline to review certain fund and corporate structures with an Irish or Luxembourg legal entity in order to assess whether they might be affected by the Directive. We are also working with industry groups to respond to the feedback statement by the deadline of 8 May 2023 and would welcome any comments from stakeholders.

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About the Maples Group

The Maples Group is a leading service provider offering clients a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. The Maples Group distinguishes itself with a client-focused approach, providing solutions tailored to their specific needs. Its global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure clients gain immediate access to expert advice and bespoke support, within convenient time zones.

The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Ireland Fund Report, as of 30 June 2022). Our sizeable and fast-growing Luxembourg legal services team cover the whole range of funds and investment management services. For more information, please visit: [maples.com](https://www.maples.com).

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