



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | October – December 2021

Table of Contents

1	Legal & Regulatory	4
1.1	UCITS Update	4
1.2	AIFMD Update	6
1.3	Cross-Border Distribution of Investment Funds	7
1.4	Sustainable Finance Update	8
1.5	AML and White Collar Crime Developments	9
1.6	Central Bank "Dear CEO" Letter on Supervisory Expectations	11
1.7	Central Bank Final Cross Industry Outsourcing Guidance	12
1.8	Central Bank Operational Resilience Guidance	12
1.9	Central Bank Q&A on the Payment of Distributions and Variable Remuneration	12
1.10	Central Bank - New Strategy	12
1.11	SEAR and Individual Accountability	13
1.12	IFR and IFD Update	13
1.13	Central Bank Dear CEO Letter on MIFID Client Suitability Frameworks	15
1.14	Central Bank Consultation – Macro-Prudential Measures for Irish Domiciled Property Funds	15
1.15	New CSSF Fees	15
1.16	New CSSF Circular on IT Outsourcing	15
1.17	CSSF Working Paper Impact of COVID-19 on Investment Fund Redemptions	15
1.18	ELTIF Regulation - Proposed Amendments	16
1.19	Digital Finance Package: Agreement on MiCA and DORA	16
1.20	MiFID II / MiFIR Update	16
1.21	PRiIPs Update	17
1.22	Benchmarks Regulation and LIBOR Update	18
1.23	COVID-19 – Remote Meetings of Companies and other Legal Entities	19
1.24	EMIR Update	20
1.25	EU Securitisation Regulation	21
1.26	CSDR Update	22
1.27	SFTR Update	23
1.28	IOSCO Outsourcing Principles, Sustainability-Related Practices and Disclosures in Asset Management and ESG Ratings	23
1.29	Irish Investment Funds Statistics: Q3 2021	23
1.30	Luxembourg Undertakings for Collective Investment Statistics	24
2	Tax	24
2.1	EU Interest Limitation Rule and Investment Funds	24
2.2	COVID-19 Specific Measures - Ireland	24
2.3	Overseas Mergers Involving Irish and Luxembourg Funds Exempt from Hong Kong Stamp Duty	25
2.4	Proposed EU Directive on "Shell" Entities	25
2.5	OECD and EU GloBE Rules	26
2.6	COVID-19 Specific Measures - Luxembourg	27

Contacts 28
About the Maples Group..... 29

1 Legal & Regulatory

1.1 UCITS Update

Ireland

On 1 October 2021, the Central Bank of Ireland ("Central Bank") published the [34th edition](#) of its UCITS Q&A which include new Q&As on the implementation of the European Securities and Markets Authority ("ESMA") [guidelines](#) on marketing communications under the Regulation on cross-border distribution of funds. The new UCITS Q&As, ID 1102 and ID 1103, relate to the implementation of paragraph 8 and 47 respectively of those guidelines.

On 29 October 2021, the Central Bank issued the 35th edition of its [UCITS Q&A](#), which includes a new Q&A, ID 1104 setting out its expectations on filing key investor information documents ("KIIDs") for UCITS which implement ESMA's Performance Fee Guidelines with effect from 31 December 2021.

On 20 December 2021, the Central Bank issued the [36th edition of its UCITS Q&A](#), which includes two new Q&As:

- ID 1105 sets out the Central Bank's expectations that multi-manager UCITS will comply with ESMA's July 2021 Q&A on performance fees in multi-manager UCITS. It confirms that existing multi-manager UCITS must bring their performance fee methodologies into compliance by 1 January 2023.
- ID 1106 addresses the establishment of new multi-manager UCITS utilising performance fees and notes that those UCITS must be established in compliance with ESMA's July 2021 Q&A on performance fees in multi-manager UCITS.

Luxembourg

On 3 November 2021, the *Commission de Surveillance du Secteur Financier* ("CSSF") published an updated [FAQ on the law of 17 December 2010 relating to undertakings for collective investment](#) with six new FAQs on the extent to which UCITS are allowed to hold ancillary liquid assets and to clarify the UCITS diversification rules. It clarifies, among others, that:

- A UCITS must limit ancillary liquid assets (as used in article 41(2) (b) of the [law of 17 December 2010](#) relating to undertakings for collective investment ("2010 Law") to bank deposits at sight, such as cash held in current accounts with a bank and accessible at any time.
- Ancillary liquid assets that may be held are limited to 20% of the net assets of a UCITS. This limit may be temporarily breached when required due to exceptionally unfavourable market conditions or where a breach is justified having regard to the interests of the investors.
- Bank deposits, money market instruments and money market funds that meet the criteria of article 41(1) of the 2010 Law cannot be considered 'ancillary liquid assets' under article 41(2) (b) of the 2010 Law.
- A UCITS is only permitted to invest in bank deposits, money market instruments or other eligible assets listed under article 41(1) of the 2010 Law if this is clearly indicated in its investment policy.
- Margin accounts do not qualify as bank deposits under article 41(1)(f) of the 2010 Law or as ancillary liquid assets under article 41(2)(b) of the 2010 Law.

UCITS are expected to comply with the updated FAQ by 31 December 2022 at the latest taking into consideration the best interests of investors.

On 17 December 2021, the CSSF published an updated [FAQ on the 2010 Law](#) with one new FAQ on the eligibility of special purpose acquisition companies ("SPACs") for UCITS. The CSSF confirmed that a UCITS is permitted to invest in SPACs if certain conditions are met including (i) the SPAC must qualify as a transferable security; and (ii) the UCITS must conduct a detailed risk assessment prior to investing. The FAQ also stated that, in the CSSF's opinion, a UCITS' investment in SPACs should in principle be limited to a maximum of 10% of a UCITS' net asset value ("NAV").

EU

On 25 November 2021, the European Commission adopted a package of measures to improve the ability of companies to raise capital across the EU including a [legislative proposal](#) for a Directive with targeted amendments to AIFMD and the UCITS Directive arising from the AIFMD review. The proposals also contain changes to the UCITS Directive to align delegation, liquidity risk management and regulatory reporting more closely with AIFMD rules. It is proposed that a UCITS management company must be able to objectively justify its entire delegation structure but there is no fundamental change to the existing delegation framework. The emphasis is on achieving a coherent approach to delegation activities.

The legislative package will now be discussed by the European Parliament and the Council.

For more information, see our update, [Introducing UCITS VI: Legislative Proposals to Amend UCITS Regime](#).

On 26 November 2021, ESMA published an updated version of its [Q&As](#) on the application of the UCITS Directive. A new Q&A in section XII (Costs and fees) relating to fee rebate arrangements has been added. On 17 December 2021, ESMA published another update of its [Q&As](#) adding the following Q&As on issuer concentration:

- How securities issued by certain issuers (for example, sovereign issuers) under Article 54(1) of the UCITS Directive are treated.
- Where a UCITS has a hedged share class in a different currency, whether unrealised foreign exchange profits and losses should be counted towards the NAV of the hedged share class and be taken into account when calculating the counterparty risk limit under Article 52(1) of the UCITS Directive.

On 21 December 2021, the quick fix amendments to PRIIPS Regulation and UCITS Directive came into force (for more details, see "PRIIPs Update" below).

Covered Bond Directive

The [European Union \(Covered Bonds\) Regulations 2021](#) (published in November 2021) which give effect to the Covered Bonds Directive ([EU](#) 2019/2162 ("Covered Bonds Directive") in Ireland will come into force on 8 July 2022. The [law of 8 December 2021](#) which gives effect to the Covered Bonds Directive in Luxembourg will come into force on 8 July 2022.

This Directive establishes a uniform EU framework with specific structural features which must be satisfied by bonds issued by EU credit institutions which are to be classified as 'covered bonds' under the UCITS framework. From 8 July 2022, UCITS will only be able to avail of the higher investment

restrictions applicable to covered bonds where they are satisfied that the relevant bonds meet the specific criteria in the Covered Bonds Directive.

1.2 AIFMD Update

Ireland

On 1 October 2021, the Central Bank published the [42nd edition](#) of its AIFMD Q&A which include new Q&As on the implementation of the ESMA guidelines on marketing communications under the Regulation on cross-border distribution of funds. The new AIFMD Q&A ID 1148 relates to the implementation of paragraph 47 of those guidelines. The new AIFMD Q&A IDs 1149 and 1150 relate to investment by QIAIFs and RIAIFs in UK investment funds.

On 29 October 2021, the Central Bank issued the 43rd edition of its [AIFMD Q&A](#), updating Q&A ID 1139 which sets out its position on non-financial instrument assets, a Depository of Assets other than Financial Instruments ("DAoFI") may safe-keep. The list of permissible non-financial asset classes has been updated to include aircraft. On 20 December 2021, the Central Bank issued the [44th edition](#), which includes three new Q&As:

- ID 1151 sets out its expectations for an arrangement involving a non-discretionary investment advisor which provides services to a QIAIF. The Q&A affirms the Central Bank's expectation that the investment advisor is performing a role that is advisory in nature and the AIFM must be able to evidence this on request from the Central Bank. This clarification will be useful to firms considering launching investment limited partnership vehicles and follows several exchanges with the Central Bank. For more information, see our update, [CBI Clarifies Expectations on Non-Discretionary Investment Advisors](#).
- ID 1152 sets out its expectations that multi-manager RIAIFs will comply with ESMA's July 2021 Q&A on performance fees in multi-manager AIFs. It confirms that existing multi-manager RIAIFs must bring their performance fee methodologies into compliance by 1 January 2023.
- ID 1153 addresses the establishment of new multi-manager RIAIFs utilising performance fees and notes that those RIAIFs must be established in compliance with ESMA's July 2021 Q&A on performance fees in multi-manager AIFs.

EU – AIFMD 2.0 Proposals

On 25 November 2021, the European Commission adopted a [legislative proposal](#) for a Directive with targeted amendments to AIFMD (and the UCITS Directive) arising from the AIFMD review. The suggested changes cover key topics including delegation; liquidity risk management; loan origination; marketing; and depository services. The proposal aims to harmonise the AIFMD and UCITS regimes. It also harmonises the rules on funds that give loans to companies. The proposal does fundamentally change the existing AIFMD delegation framework as the emphasis is on strengthening supervisory oversight to ensure a more level playing field in how the current delegation rules are applied.

Specifically, it introduces a reporting regime where all EU national competent authorities ("NCAs") would be obliged to report annually to ESMA any instances where AIFMs which they regulate are delegating more portfolio management or risk management functions to entities located in non-EU countries than they are retaining.

The Council of the EU and the European Parliament will now consider the proposal and it is anticipated that agreement could be reached by mid-to-end 2022.

For more information, see our update, [AIFMD 2.0: European Commission Publishes Legislative Proposals](#).

On 17 December 2021, ESMA published an updated version of its AIFMD [Q&As](#) adding a new Q&A on whether managers of undertakings investing in cryptoassets are subject to AIFMD. ESMA states that collective investment undertakings, raising capital from a number of investors to invest in cryptoassets in accordance with a defined investment policy for the benefit of those investors will qualify as an AIF. AIFMD does not provide for a list of eligible or non-eligible assets and AIFs can invest in traditional and alternative assets.

1.3 Cross-Border Distribution of Investment Funds

The EU's regulatory framework for facilitating the cross-border distribution of UCITS and AIFs came into effect on 2 August 2021. It comprises Regulation (EU) 2019/1156 ("CBD Regulation") and Directive (EU) 2019/1160 ("CBD Directive"). The [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) Regulations 2021](#) and the [European Union \(Alternative Investment Fund Managers\) \(Amendment\) Regulations 2021](#) give effect to the CBD Directive in Ireland. The [law of 21 July 2021](#) gives effect to the CBD Directive in Luxembourg. On 1 October 2021 the Central Bank published a [notice of intention](#) on the ESMA Guidelines on marketing communications under the CBD Regulation. The notice states that it expects full compliance with the Guidelines in line with the relevant application date of 2 February 2022. The Central Bank will, in due course, consult on the incorporation of a provision into both the Central Bank UCITS Regulations and AIF Rulebook setting out that compliance with the Guidelines is required.

On 11 November 2021, a [corrigendum](#) to Commission Implementing Regulation (EU) 2021/955 was published in the Official Journal of the EU. This Implementing Regulation lays down ("ITS") under Articles 5(3), 10(3) and 13(3) of the CBD Regulation. The corrigendum replaces Article 1 and the third disclaimer in Annex 1 with new text.

Reverse Solicitation

On 3 January 2021, ESMA published a [letter](#) (dated 17 December 2021) to the European Commission on the Commission's report on reverse solicitation under the CBD Regulation. In September 2021, the Commission sent ESMA a [letter](#) requesting it to gather information NCAs on the use of reverse solicitation by asset managers and the impact on passporting activities.

In the letter, ESMA:

- States that the majority of NCAs were unable to provide an estimation of the share of reverse solicitation as compared to marketing. This reflects the absence in EU law of any obligation requiring asset managers to report to their NCAs information on subscriptions resulting from reverse solicitation.
- Reports that several NCAs believe that reverse solicitation is used in practice to circumvent the rules of the third-country and EU passport regimes. It considers that this raises investor protection and may create an uneven playing field between EU and non-EU asset managers operating in the EU through reverse solicitation.
- Suggests that the Commission may wish to consider introducing new reporting requirements on the use of reverse solicitation.

1.4 Sustainable Finance Update

Ireland

On 3 November 2021, the Governor of the Central Bank issued a letter with its supervisory expectations on climate and other environmental, social and governance ("ESG") related issues. For more details, see "Central Bank "Dear CEO" Letter on Supervisory Expectations" below.

On 15 November 2021, the Central Bank issued a [notice](#) formally confirming its intention to establish a fast-track filing process and clarifying the filing requirements for pre-contractual documentation updates in relation to the [Taxonomy Regulation](#) (EU) 2020/852 and Level 2 measures on the [Sustainable Finance Disclosure Regulation](#) (EU) 2019/2088 ("SFDR L2").

For more information, please see our update, [Central Bank of Ireland Provides Details for Taxonomy Regulation and SFDR Level 2 Fast-Track Processes](#)

Luxembourg

On 2 December 2021, the CSSF [formally confirmed](#) its intention to establish a fast-track filing procedure and clarifying the filing requirements for pre-contractual documentation updates under the Taxonomy Regulation.

EU

SFDR

On 22 October 2021, the European Supervisory Authorities ("ESAs") (that is, the EBA, EIOPA and ESMA) published a [joint final report](#) on draft regulatory technical standards ("amending RTS") on the content and presentation of sustainability disclosures under Articles 8(4), 9(6) and 11(5) of SFDR. The amending RTS takes the form of amendments to the draft RTS on the content, methodologies and presentation of disclosures under the SFDR that the ESAs finalised in February 2021 and contains:

- Pre-contractual and periodic disclosures for products under Articles 5 and 6 of the Taxonomy Regulation that identify the environmental objectives to which the product contributes and show how and to what extent the product's investments are aligned with the EU taxonomy.
- Elements measuring how and to what extent activities funded by products under Articles 5 and 6 of the Taxonomy Regulation are aligned with the EU taxonomy.
- Annexes with amendments to the mandatory templates for financial products that promote environmental and/or social characteristics or have a sustainable investment objective as defined in the SFDR, so that they include additional disclosures for products under Articles 5 and 6 of the Taxonomy Regulation.

Section 5 to the report contains a consolidated version of the SFDR RTS, incorporating these amendments into the text of the SFDR RTS published in February 2021. The European Commission confirmed in July 2021 that the SFDR RTS will be adopted in a single delegated act with an expected application date of 1 July 2022.

The ESAs also sent a [letter](#) to the European Commission noting various challenges arising. Among other issues, the ESAs note a discrepancy in the timeframe for reporting on taxonomy alignment where products would have to disclose this without access to any taxonomy-aligned information on

underlying investee companies until 2023 at the earliest. On 25 November 2021 the Commission [confirmed](#) the date of application of SFDR RTS has been further pushed out to 1 January 2023. In addition, the letter states that the Principal Adverse Sustainability Impacts ("PASI") statement will need to comply with the disclosure requirements on principal adverse impacts in the RTS for the first time by 30 June 2023, i.e. the first reference period under the RTS to be 1 January 2022 to 31 December 2022.

Taxonomy Regulation

On 29 December 2021, [Commission Delegated Regulation \(EU\) 2021/2139](#) supplementing the Taxonomy Regulation on climate change mitigation and adaptation ("Taxonomy Climate Delegated Act") came into force and will apply from 1 January 2022. It contains technical screening criteria that define which activities contribute to environmental objectives in the Taxonomy Regulation (climate change adaptation and climate change mitigation).

On 30 December 2021, Commission Delegated Regulation [\(EU\) 2021/2178](#) supplementing Article 8 of the Taxonomy Regulation by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of the Non-Financial Reporting Directive [\(EU\) 2014/95](#) concerning environmentally sustainable economic activities and the methodology to comply with that disclosure obligation also came into force and will apply from 1 January 2022 (the application of specific requirements will depend on the type of entity).

Article 8 requires large corporates to include in their non-financial statements information on how and to what extent their activities are associated with environmentally sustainable economic activities. The Delegated Regulation specifies the content and presentation of information to be disclosed by non-financial undertakings, asset managers, credit institutions, investment firms, and insurance and reinsurance undertakings. It also sets out common rules on key performance indicators. On 20 December 2021, the European Commission and EU Platform on Sustainable Finance published [further information](#) to support disclosures under Article 8.

1.5 AML and White Collar Crime Developments

Ireland

In November 2021, the Central Bank published the 7th edition of its [AML Bulletin](#) which contains information on its supervisory engagements with funds and fund management companies. It identifies a number of areas where funds and fund management companies ("Firms") must introduce enhancements to ensure compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The findings are based on supervisory engagement it has had with Firms since 2019. Across four discrete areas, it sets out the weaknesses it identified in the anti-money laundering and terrorist financing ("AML/CFT") practices of the Firms it reviewed; and the measures it expects Firms to take.

For more information, please see our update, [Central Bank of Ireland Calls for Fund Mancos to enhance their AML Frameworks](#).

The [Companies \(Corporate Enforcement Authority\) Act 2021](#) was signed into law in December 2021 and awaits a commencement order to come into force. It will transform the Office of the Director of Corporate Enforcement into a statutory and independent agency, the Corporate Enforcement Authority with additional resources and powers to investigate and prosecute white collar crime.

Luxembourg

On 14 December 2021, the CSSF issued a [press release](#) on its 2021 online survey on the fight against money laundering and terrorist financing which will be launched on 15 February 2022. The purpose was to collect standardised key information concerning: (i) the money laundering / terrorist financing risks to which professionals under the CSSF's AML / CTF supervision are exposed; and (ii) the implementation of measures to mitigate these risks. Answers must be submitted through the CSSF's [eDesk](#) by 15 April 2022.

On 22 December 2021, the CSSF [published](#) three circulars to improve the risk-based supervision by the CSSF of investment fund managers ("IFMs") and undertakings for collective investment ("UCIs"), both for prudential and AML/CFT purposes:

- CSSF [Circular 21/788](#) introduces a new requirement for the auditor of an IFM or UCI supervised by the CSSF to produce an annual report on the compliance of the IFM or UCI with its AML/CFT obligations. The report must be filed with the CSSF within six months of the financial year end of the IFM or UCI.
- CSSF [Circular 21/789](#) introduces new tools for the CSSF to supervise IFMs. It requires IFMs to complete a self-assessment questionnaire ("SAQ") on its compliance with applicable laws and regulations, which must be filed with the CSSF within six months of the financial year end. The circular also puts in place rules around the management letter which an IFM's auditor prepares in connection with the IFM's annual report audit. The management letter must be filed with the CSSF. Finally, the auditor must review the IFM's SAQ and report back to the CSSF.
- CSSF [Circular 21/790](#) is similar to circular 21/789 but applies to UCIs. It requires UCIs to complete a SAQ on its compliance with applicable laws and regulations, which must be filed with the CSSF within either three or four months of the financial year end, depending on the type of UCI. Where the auditor of a UCI issues a modified audit opinion, the UCI's board of directors must file an explanatory letter with the CSSF. The circular also puts in place rules around the management letter which a UCI's auditor prepares in connection with the UCI's annual report audit. The management letter must be filed with the CSSF. Finally, the auditor must review the UCI's SAQ and report back to the CSSF.

For more information, please see our update, [Changes to Luxembourg Reporting Requirements](#).

EU and International

On 19 October 2021, the European Commission published its [work programme for 2022](#) which includes proposals designed to strengthen and modernise the EU AML/CFT framework.

On 20 October 2021, the Association for Financial Markets in Europe ("AFME") published a [paper](#) on firms' monitoring of financial transactions for suspicion of money laundering (AML transaction monitoring ("TM")). The paper considers the effectiveness of the processes that make up a firm's AML TM control framework. It also provides a roadmap to help firms most effectively operate their AML TM systems. It is based on survey results with banking firms, regulators, law enforcement agencies and financial intelligence units across Europe.

On 28 October 2021, the Financial Action Task Force ("FATF") published the [updated version](#) of its guidance on the risk-based approach to virtual assets ("VAs") (also known as cryptoassets) and virtual asset service providers ("VASPs"). It explains how the FATF's AML/CFT standards apply to VAs and VASPs, provides relevant examples, identifies obstacles to applying mitigating measures

and offers potential solutions. FATF will continue to monitor the VAs and VASPs sector for any material changes that necessitate further revision of its standards.

On 1 December 2021, the Council of the EU [announced](#) that EU ambassadors have agreed to negotiate with the European Parliament on the proposed Regulation on information accompanying transfers of funds and certain cryptoassets. The modifications it has introduced clarify the Commission's legislative proposal, in particular, by introducing requirements for cryptoasset transfers between cryptoasset service providers and un-hosted wallets. They also require that the full set of originator information travel with the crypto-asset transfer, irrespective of the transaction amount.

On 3 December 2021, FATF's [October 2021 consultation](#) on amendments to recommendation 24 on transparency and beneficial ownership of legal persons closed. The intention is to strengthen the international standard on beneficial ownership of legal persons to ensure greater transparency about their ultimate ownership and control.

On 10 December 2021, the European Banking Authority ("EBA") published a [consultation paper](#) on draft guidelines on the use of remote customer onboarding solutions under Article 13(1) of the Fourth Money Laundering Directive ([EU](#)) 2015/849 ("MLD4"). They set out common standards for competent authorities on the steps that financial sector operators should take to ensure development of sound, risk-sensitive initial customer due diligence ("CDD") processes in the remote customer onboarding context.

On 16 December 2021, the EBA published:

- [Final Guidelines](#) setting out how prudential supervisors, AML/CFT supervisors and financial intelligence units ("FIUs") should cooperate and exchange information in relation to AML/CFT, in line with the Capital Requirements Directive.
- [Revised Guidelines](#) on risk-based supervision of credit and financial institutions' compliance with AML/CFT obligations.

On 20 December 2021, the EBA published a [final report](#) on draft RTS on the establishment of an AML/CFT central database. The European Reporting system for material CFT/AML weaknesses ("EuReCA") will be a key tool for coordinating efforts to prevent money laundering and terrorism financing. The draft RTS will now be submitted to the European Commission for approval and EuReCA will start to receive data in Q1 2022.

1.6 Central Bank "Dear CEO" Letter on Supervisory Expectations

On 3 November 2021, the Governor of the Central Bank issued a letter setting out its supervisory expectations of regulated financial service providers on climate and other ESG-related issues. Recognising climate change as a strategic priority that requires action by all financial sector participants, it acknowledged the need for it to lead and drive the climate and broader ESG agenda within the regulated firms it oversees. The Governor has written to regulated financial service providers to highlight the statutory obligations and related supervisory expectations relating to climate and sustainability issues.

For more information, please see our update, [Central Bank of Ireland Signals its Expectations on ESG / Sustainability to Irish-Regulated Firms](#).

1.7 Central Bank Final Cross Industry Outsourcing Guidance

On 17 December 2011, the Central Bank published both its [feedback statement](#) and finalised cross industry outsourcing [Guidance](#). It is worth noting that the confirmation in the feedback statement that *"while the Guidance will come into effect on the publication date, the supervisory approach to its implementation will be mindful of the adjustments to be made by firms relative to the nature, scale and complexity of the use of outsourcing as an element of their business mode"*. The feedback statement also provides details on timelines and impacted firms regarding the outsourcing register, with a spreadsheet template for the register being made available in Q1.

For more information, please see our update, [CP138: Central Bank of Ireland Publishes Cross-Industry Outsourcing Guidance](#).

1.8 Central Bank Operational Resilience Guidance

On 1 December 2021, the Central Bank issued its operational resilience [guidance paper](#) which applies to all regulated financial service providers as defined in the Central Bank Act 1942. This follows its consultation seeking views on a draft form of the guidance ("CP140"). Boards and senior management are expected to review the guidance and adopt appropriate measures to improve their governance and risk frameworks and their effective management of operational resilience within an 'appropriate timeframe'.

For more information, see our update, [Central of Ireland Publishes Operational Resilience Guidance](#).

1.9 Central Bank Q&A on the Payment of Distributions and Variable Remuneration

In light of the reduction in the level of uncertainty arising from the impact of COVID-19 on MiFID investment firms, the Central Bank has updated its [Q&A](#) addressed to the investment firm sector on the payment of distributions and variable remuneration with effect from 1 October 2021. This Q&A is also addressed to MiFID market operators.

1.10 Central Bank - New Strategy

As part of the development of its strategy, the Central Bank invited public submissions to help inform its strategic direction over the coming five years. On 4 November 2021, it published its [new strategy](#) (dated 30 September 2021) built on four key themes: future-focused; open and engaged; transforming; and safeguarding. It notes that the last decade has seen the Central Bank respond to significant and unexpected change, not least the global financial crisis, Brexit and the COVID-19 pandemic.

Of the four themes mentioned above, safeguarding reflects its commitment to strengthen the design, implementation and operation of its core policy and supervisory frameworks. In this regard, it aims to:

- Maintain price stability.
- Review and develop the macro-prudential framework for banks, borrowers and non-banks
- Accelerate the evolution of our risk-based supervisory approach, such that it becomes more data-driven, agile and scalable.
- Enhance the regulatory framework and its supervisory execution, prioritising: (a) the interests of consumers (b) governance, accountability, behaviours and conduct in firms (c) financial and operational resilience in firms and (d) AML/CFT compliance.

- Continue to strengthen its crisis management capabilities and ensure that relevant regulated firms progress towards resolvability.

1.11 SEAR and Individual Accountability

The [General Scheme](#) of the Central Bank (Individual Accountability) Bill and its Regulatory Impact Analysis were published in July 2021. The final bill is expected to be published in early 2022 according to a [statement](#) by the Minister for Finance, Paschal Donohoe on 10 November 2021.

1.12 IFR and IFD Update

The Investment Firms Directive ([EU](#) 2019/2034 ("IFD")) and the Investment Firms Regulation ([EU](#) 2019/2033 ("IFR")) came into force on 26 June 2021 and introduced a new prudential regime for MiFID investment firms across the EU that were subject to the Capital Requirements Regulation ([EU](#) 575/2013 ("CRR")) and the Capital Requirements Directive ("CRD"). On 27 July 2021, the [law of 21 July 2021](#) transposing the IFD into Luxembourg law and implementing the IFR was published in the Official Journal of Luxembourg. On 21 September 2021, Irish-transposing regulations (the European Union (Investment Firms) Regulations 2021 and the European Union (Investment Firms) (No 2) Regulations 2021) came into force.

Ireland

On 29 October 2021, the Central Bank published a [notice](#) setting out requirements and guidance on the implementation of competent authority discretions in the above transposing regulations and Regulation ([EU](#) 2019/2033) on the prudential requirements for MiFID investment firms. It does not amend the proposed approach to IFD / IFR NCA discretions outlined in the Central Bank's consultation which relies on a case-by-case approach for individual firms with the onus on firms to apply to the Central Bank to exercise its discretion.

EU

On 19 October 2021, the EBA published its [final draft RTS](#) on the disclosure of the investment policy by investment firms under the IFR.

Article 52 of the IFR requires investment firms other than small and non-interconnected firms to publicly disclose information on their investment policy. Article 52(3) mandates the EBA to develop draft RTS specifying templates for these disclosures. The first disclosure date will be 31 December 2021. The final draft RTS have been submitted to the European Commission for adoption.

On 18 November 2021, the EBA published a [consultation](#) on draft RTS relating to Pillar 2 add-ons for investment firms under the IFD. The deadline for responses is 18 February 2022. The EBA intends to finalise the draft RTS and submit them to the European Commission by 30 June 2022.

On 18 November 2021, the EBA and ESMA published a [consultation](#) on joint guidelines on common procedures and methodologies for the supervisory review and evaluation process ("SREP") under the IFD. They set out the process and criteria for the assessment of the main SREP elements such as business model, governance arrangements and firm-wide controls, risks to capital and capital adequacy, and liquidity risk and liquidity adequacy. The deadline for responses is 18 February 2022.

On 22 November 2021, the EBA published a [final report](#) on its revised guidelines on sound remuneration policies for investment firms under the IFD. They provide further details on how the

provisions under the IFD on remuneration policies and variable remuneration of identified staff should be applied by class 2 investment firms. They will apply to competent authorities across the EU, as well as to credit institutions and investment firms on an individual and consolidated basis.

On 22 November 2021, the EBA also published [revised guidelines](#) on internal governance for investment firms under the IFD. They detail how the IFD governance provisions should be applied by Class 2 investment firms, specifying the tasks, responsibilities and organisation of the management body, and the organisation of investment firms, including the need to create transparent structures that allow for supervision of all their activities.

On 10 December 2021, the EBA published the following consultations on liquidity requirements:

- [Consultation paper](#) on draft RTS on the specific liquidity measurement for investment firms under Article 42(6) of the IFD. They detail the types of risk that competent authorities should assess for these purposes, including liquidity risk stemming from trading activities or from loss in income from portfolio management, liquidity risk relating to funding and inadequate management and controls of liquidity risk.
- [Consultation paper](#) on draft guidelines on liquidity requirements exemption for investment firms under Article 43(4) of the IFR. The draft specifies that the exemption should be based on the assessment of financial resource needs for orderly wind-down of an SNI firm.

The deadline for responses is 10 March 2022. The EBA intends to publish the final guidelines by mid-2022, with the guidelines applying two months following publication.

The following Delegated Regulations entered into force and apply from 12 December 2021:

- [Commission Delegation Regulation \(EU\) 2021/2154](#) supplementing the IFD with RTS specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages.
- [Commission Delegation Regulation \(EU\) 2021/2155](#) supplementing the IFD with RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration.

On 20 December 2021, the EBA published a [final report](#) on RTS on the reclassification of investment firms as credit institutions. Article 8a of the CRD IV Directive ([EU\) 2013/36](#) which was introduced by the IFD, specifies the triggers (the average of the firm's monthly total assets, calculated over a period of 12 consecutive months on a solo consolidated basis, is equal to or exceeds EUR30bn) for when a systemically important investment firm must seek authorisation as a credit institution.

On 20 December 2021, the EBA also published a [final report](#) on draft RTS on the provision of information for the effective monitoring of the credit institution thresholds under the IFR. The EBA will submit the draft RTS to the European Commission for endorsement. They are expected to apply from June 2022, subject to the legislative process being concluded in time.

On 22 December 2021, [Commission Implementing Regulation \(EU\) 2021/2284](#) laying down implementing technical standards ("ITS") on supervisory reporting and disclosure requirements for investment firms under the IFR was published in the Official Journal of the EU. The ITS specify templates, reporting dates and definitions relating to the supervisory reporting and disclosure requirements for investment firms under the IFR. The provisions on disclosures and reporting reflect

mandates in Articles 49(2) and 54(3) respectively of the IFR. It will enter into force on 11 January 2022.

[Commission Delegation Regulation \(EU\) 2021/2153](#) supplementing the IFD with RTS specifying the criteria for subjecting certain investment firms to Capital Requirements Regulation requirements entered into force and applies from 27 December 2021.

1.13 Central Bank Dear CEO Letter on MIFID Client Suitability Frameworks

On 1 December 2021, the Central Bank published a [Dear CEO letter](#) addressed to MiFID authorised investment firms and credit institutions offering MiFID investment services detailing findings from its review of firms' compliance with MiFID II suitability requirements. The review identified evidence of positive practices and instances where further action is required by firms. Firms must take account of the letter and the related ESMA [public statement](#) of July 2021.

For more information, see our update, [CBI Identifies MiFID Client Suitability Requirements Deficiencies](#).

1.14 Central Bank Consultation – Macro-Prudential Measures for Irish Domiciled Property Funds

On 25 November 2021, the Central Bank published a [consultation paper](#) CP 145 on macro prudential measures for the property fund sector. It is consulting on a proposal to introduce macro-prudential limits on leverage and to provide guidance to limit liquidity mismatch for Irish-authorized property funds (subject to AIFMD). The policy aims to safeguard the resilience of Irish property funds so that the sector is better able to absorb, rather than amplify, adverse shocks in future times of stress. The consultation closes on 18 February 2022.

1.15 New CSSF Fees

The [Grand-Ducal Regulation of 17 December 2021](#) entered into force on 1 January 2022 and repealed the Grand-Ducal Regulation of 21 December 2017. It 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. Certain fees will be increased and new fees will be introduced (e.g. IFMs that apply for a licence extension will be charged a once off fee of EUR 7,500).

1.16 New CSSF Circular on IT Outsourcing

On 14 October 2021, the CSSF issued [circular 21/785](#) which amended circulars [12/552](#), as amended, [17/656](#), [20/758](#) and [17/654](#) and replaced the prior authorisation obligation with a prior notification requirement for material IT outsourcing. It applies to all credit institutions, professionals of the financial sector, payment institutions, electronic money institutions as well as IFMs subject to circular [18/698](#) and entered into force on 15 October 2021. The CSSF [confirmed](#) on 20 October 2021 that its publication will not impact the thoroughness of its supervision in this context.

1.17 CSSF Working Paper Impact of COVID-19 on Investment Fund Redemptions

On 21 October 2021, the CSSF [published](#) a working paper on "The impact of COVID-19 on large redemptions in the Luxembourg investment fund market" which analyses large daily and weekly net redemptions during the peak of the pandemic from March to December 2020. It investigates whether large redemptions are associated with fund characteristics such as portfolio liquidity and size. It also

documents the use of liquidity management tools by funds facing large redemptions, and correlates it to fund-specific risk drivers and the size of net redemptions.

1.18 ELTIF Regulation - Proposed Amendments

On 25 November 2021, the European Commission adopted a package of measures to improve the ability of companies to raise capital including a [legislative proposal](#) for a Regulation amending the Regulation on European long-term investment funds ("ELTIFs") ([EU](#) 2015/760 ("ELTIF Regulation"). The targeted amendments to the ELTIF Regulation aim to:

- Allow greater flexibility for fund managers to design appropriate investment strategies and portfolio compositions for ELTIFs.
- Reducing the barriers to entry for retail investors while ensuring appropriate levels of investor protection.
- Introducing an additional liquidity window redemption mechanism intended to allow investors the possibility to exit an ELTIF investment early subject to certain conditions.

The Council of the EU and the European Parliament will now consider the legislative proposal.

1.19 Digital Finance Package: Agreement on MiCA and DORA

The Council of the EU on 24 November 2021 [adopted](#) its position on two proposals that are part of the digital finance package: the Regulation on Markets in Crypto Assets ("MiCA") and the Digital Operational Resilience Act ("DORA").

MiCA will apply to any person providing cryptoasset services or issuing cryptoassets in or into Europe. DORA aims to create a regulatory framework on digital operational resilience where all firms ensure they can withstand all types of ICT-related disruptions and threats, in order to prevent and mitigate cyber threats.

This agreement forms the Council's negotiating mandate for trilogue negotiations with the European Parliament.

On 7 December 2021, the European Parliament published the [report](#) adopted by its Economic and Monetary Affairs Committee on DORA (which it adopted on 1 December 2021). The report has now been tabled for the Parliament to consider in plenary.

1.20 MiFID II / MiFIR Update

The [Markets in Financial Instruments Directive](#) ([EU](#) 2014/65 ("MiFID II") and the Markets in Financial Instruments Regulation ([EU](#) 600/2014 ("MiFIR") apply from 3 January 2018.

Ireland

On 29 October 2021, the Central Bank published a [notice](#) setting out requirements and guidance on the implementation of competent authority discretions in the European Union (Investment Firms Regulations) 2021, European Union (Investment Firms Regulations) (No. 2) 2021 and Regulation ([EU](#)) 2019/2033 on the prudential requirements for MiFID investment firms.

On 1 December 2021, the Central Bank published a [Dear CEO letter](#) on findings from its review of firms' compliance with MiFID II suitability requirements. For more details, see "Central Bank Dear CEO Letter on MIFID Client Suitability Frameworks" above.

EU

In November 2021, ESMA updated its MiFID II / MiFIR Q&As on [investor protection topics and intermediaries](#).

On 19 November 2021, Commission Delegated Regulation ([EU](#)) 2021/1833 supplementing MiFID II by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level came into force.

On 22 November 2021, ESMA published a [final report](#) on draft technical standards for commodity derivatives. ESMA was required to develop RTS under the MiFID II Amending Directive ([EU](#)) 2021/338 which introduces significant changes to the MiFID II commodity framework, including to the position limit regime. ESMA has submitted them to the European Commission for endorsement. The revised MiFID II regime for commodity derivatives will apply at the end of February 2022.

On 25 November 2021, the European Commission adopted a package of measures to ensure that investors have better access to company and trading data including the following:

- A [legislative proposal](#) for a Regulation amending MiFIR on enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders.
- A [legislative proposal](#) for a Directive amending MiFID II.

The Council of the EU and the European Parliament will now consider them.

On 16 December 2021, ESMA published its [annual report](#) on the application of waivers and deferrals for equity and equity-like instruments under MiFIR. ESMA concludes that trading under waivers and deferrals is significant specifically for ETFs and the bond market. The application of the discretionary deferral regime across all non-equity instruments by NCAs continues, resulting in a patchwork of national approaches across the EEA.

As regards the December 2021 ESMA [statement](#) on implementation of the clearing obligation and the derivative trading obligation under EMIR and MiFIR in light of benchmark transition, please see "EMIR Update" below.

On 17 December 2021, the European Commission adopted a Delegated Regulation supplementing MiFIR by specifying criteria for derogation from the principle that approved publication arrangements and approved reporting mechanisms are supervised by ESMA. It will now be scrutinised by the Council of the EU and the European Parliament.

1.21 PRIIPs Update

On 16 December 2021, the Joint Committee of the ESAs' October 2021 [call for evidence](#) to help it provide advice to the European Commission on its review of the PRIIPs Regulation ([EU](#)) 1286/2014 closed. Areas covered included: a survey on the use of the key information document ("KID") and on the operation of the comprehension alert; practical application of the rules; use of digital media; scope of the PRIIPs Regulation; and differentiation between different types of packaged retail and

insurance-based investment products ("PRIIPs"). The technical advice will help the Commission develop a strategy for retail investment.

On 17 December 2021, the Joint Committee of the ESAs published an [updated version](#) of its Q&As on the KID requirements for PRIIPs in Commission Delegated Regulation [\(EU\) 2017/653](#). They include new Q&As in:

- General topics
- Market risk assessment: product categories
- Performance scenarios
- List of costs of PRIIPs other than investment funds
- Presentation of costs

On 20 December 2021, [Commission Delegated Regulation \(EU\) 2021/2268](#) amending the RTS in Commission Delegated Regulation [\(EU\) 2017/653](#) as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by PRIIPs offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of the PRIIPs Regulation as underlying investment options with the prolonged transitional arrangement in that Article was published in the Official Journal of the EU.

It enters into force on 10 January 2022 and shall apply from 1 July 2022. However, Article 1, point 13 applies from 1 January 2022.

On 21 December 2021, [Regulation \(EU\) 2021/2259](#) amending the PRIIPs Regulation on the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS, and [Directive \(EU\) 2021/2261](#) amending the UCITS Directive on the use of KIDs by management companies of UCITS came into force.

UCITS qualify as PRIIPs under the PRIIPs Regulation, which requires that all PRIIPs be accompanied by a KID. The transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS, exempting them from the requirement to provide retail investors with a key KID was due to expire on 31 December 2021.

The European Commission adopted a proposal in July 2021 for a Directive amending the UCITS Directive specifying that where a KID is produced for a UCITS under the PRIIPs Regulation it should be considered as satisfying the requirements applicable to key investor information under the UCITS Directive. It also adopted amendments to the PRIIPs Regulation extending the above transitional arrangement until the application of the amendments to the UCITS Directive.

Now the transitional arrangement will extend until 31 December 2022, with the revisions to the UCITS Directive set to apply from 1 January 2023.

1.22 Benchmarks Regulation and LIBOR Update

On 19 November 2021, ESMA updated its [Q&As](#) on the Benchmarks Regulation [\(EU\) 2016/1011](#) ("BMR"). It has added new Q&As 10.12 and 10.13 on benchmark statements under Article 27(2a) of the BMR. It focuses on:

- What an administrator should disclose under Annex I of Delegated Regulation [\(EU\) 2020/1816](#) supplementing the BMR on the explanation in the benchmark statement of how ESG factors are reflected in each benchmark provided and published.
- What the difference is between taking into account ESG factors and pursuing ESG objectives. This answer was provided by the European Commission.

LIBOR

Following benchmark reform, EONIA and LIBOR will cease at the end of 2021. The exception to this is USD LIBOR, which is scheduled to continue until June 2023.

On 19 November 2021, the CSSF issued a [press release](#) to UCIs and IFMs in the context of the cessation of EONIA and LIBOR. The CSSF expects UCIs and IFMs which use benchmarks to ensure they have taken all necessary action for a smooth transition to alternative rates and notes that under the BMR UCIs and IFMs must have in place robust fallback provisions covering a possible cessation of any other benchmarks used by them, and that they may be requested by the CSSF to provide information on such fallback provisions.

On 22 October 2021, the following Commission Implementing Regulations were published in the Official Journal of the EU:

- Commission Implementing Regulation [\(EU\) 2021/1847](#) on the designation of a statutory replacement for certain settings of CHF LIBOR. The Regulation designates compound rates of Swiss Average Rate Overnight ("SARON") as the replacement rate for certain tenors of CHF LIBOR. It will apply from 1 January 2022.
- Commission Implementing Regulation [\(EU\) 2021/1848](#) on the designation of a replacement for the benchmark EONIA. The Regulation designates the Euro short-term rate (€STR) as the replacement rate for EONIA. It will apply from 3 January 2022.

As regards the December 2021 ESMA [statement](#) on implementation of the clearing obligation and the derivative trading obligation under EMIR and MiFIR in light of benchmark transition, please see "EMIR Update" below.

1.23 COVID-19 – Remote Meetings of Companies and other Legal Entities

In Ireland, the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 has been extended again to 30 April 2022. Until that date, among other things, both general and creditors' meetings may be held virtually; and documents which are required to be executed under seal can be executed in counterpart as separate documents which will be regarded as a single document under the Companies Act 2014. For more information on the Act's provisions, see our update, [COVID-19 Ireland Update: Company Law Changes](#).

In Luxembourg, the law of 23 September 2020 was amended on 17 December 2021 to further extend emergency measures introduced in March 2020 allowing the governing bodies of any Luxembourg company to hold meetings of shareholders and boards of directors / managers remotely (notwithstanding any contrary provisions in their articles of incorporation). This was extended until 31 December 2022.

1.24 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, central counterparties ("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.

There have been a number of developments over the quarter:

On 4 November 2021, the EBA published a [consultation](#) on draft RTS on initial margin model validation under EMIR. The EBA proposes a dual approach to supervisory procedures proportionate to the size of the counterparty, as well as phasing-in the implementation to ensure a smooth transition, again taking into account the size of the counterparty. The draft RTS also addresses the issue of how to validate an initial margin model when it is outsourced (in terms of design or implementation) to external providers. The deadline for responses is 4 February 2022.

On 19 November 2021 ESMA updated its [Q&As](#) on EMIR implementation with answers on:

- When a financial counterparty calculates its positions for the purpose of the clearing threshold determination under Article 4a(3) of EMIR, whether it should include in the calculation the OTC derivative contracts that are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity entered into by the non-financial counterparties ("NFCs") that are part of the same group.
- Whether NFCs whose core activity is to buy, sell or own financial instruments, benefit from the hedging exemption when using OTC derivative contracts to hedge certain risks, for example, risks arising from the potential indirect impact on the value of assets the NFC buys, sells or owns resulting from the fluctuations of interest rates, inflation rates, foreign exchange rates or credit risk.

On 19 November 2021, ESMA also published a [consultation](#) on highly liquid financial instruments with regards to the investment policy of CCPs. ESMA is mandated to report to the European Commission on whether the list of financial instruments (in Article 47 of EMIR) that are considered highly liquid with minimal market and credit risk could be extended and whether that list could include one or more money market funds ("MMFs") authorised under MMFR. ESMA wants information on the expected effects of potentially extending the list of investment possibilities for EU CCPs and the type of financial instruments that could be considered.

ESMA does not believe that there is sufficient ground to recommend an extension of the list of financial instruments for CCP investments to MMFs at this stage. The consultation closes on 24 January 2022. ESMA expects to publish a final report in spring 2022.

On 22 November 2021, ESMA published a [discussion paper](#) on a review of the clearing thresholds under EMIR. It requests feedback by 19 January 2022.

Implementation of the clearing obligation and the derivative trading obligation

On 18 November 2021, ESMA published a [final report](#) on draft RTS amending the RTS on the clearing obligation ("CO") and on the derivative trading obligation ("DTO") under Article 5(2) of EMIR and Article 32 of MiFIR.

ESMA's proposed amendments aim to ensure a smooth benchmark transition and amend the scope of the CO and the DTO to accompany the benchmark transition for OTC derivatives away from EONIA and LIBOR and on to new Risk-Free Rates.

ESMA has submitted the draft RTS to the European Commission for endorsement. On 16 December 2021, ESMA published a [statement](#) on implementation of the CO and the DTO. Legally, neither ESMA nor competent authorities possess any formal power to disapply a directly applicable EU legal text. However, ESMA does not expect the liquidity criteria for the CO and the DTO to be met for OTC interest rate derivative ("IRD") classes referencing EONIA, GBP LIBOR, JPY LIBOR and USD LIBOR beyond the end of 2021. ESMA is conscious that the RTS approval process may take some time and, therefore, that it is probable the proposed amendments will not have entered into force by the end of 2021, when the bulk of the liquidity of the classes referencing EONIA or LIBOR will have pivoted to other benchmarks.

Therefore, from 3 January 2022, ESMA expects competent authorities not to prioritise their supervisory actions on the CO for IRD classes referencing EONIA, GBP LIBOR, JPY LIBOR or USD LIBOR and on the DTO for IRD classes referencing GBP LIBOR or USD LIBOR 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. ESMA recommends voluntary clearing of those classes being introduced to the scope of the CO, before the CO start date.

1.25 EU Securitisation Regulation

On 7 October 2021, ESMA published its [final report](#) on the content and format of simple transparent and standardised ("STS") notifications for on-balance sheet synthetic securitisations. The draft RTS have been submitted to the European Commission for endorsement.

On 15 November 2021, the European Central Bank ("ECB") issued a [consultation](#) on a draft guide on the notification of securitisation transactions which closes on 5 January 2022. The non-binding guide sets out the information that the ECB expects directly supervised banks acting as originators or sponsors of private and public securitisation transactions to provide to enable the ECB to monitor compliance with Articles 6 to 8 of the EU Securitisation Regulation ([EU](#) 2017/2402). Articles 6 to 8 relate to risk retention and transparency requirements and a ban on re-securitisation.

On 19 November 2021, ESMA updated its [Q&As](#) on the Securitisation Regulation. As well as modifying some existing questions, it incorporates new questions on:

- Individual fields in disclosure templates
- Trigger measurements in investor reports
- Completing synthetic coverage information

The Commission intends to publish in Q1 2022 a report on the functioning of the EU securitisation framework for both STS and non-STS securitisations reflecting the outcome of its targeted consultation published in July 2021 according to its [communication](#) on progress on second CMU action plan on 25 November 2021.

On 17 December 2021, the EBA published a [consultation](#) on revisions to the ITS on the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with the Capital Requirements Regulation set out in Commission Implementing Regulation ([EU](#) 2016/1801).

The EBA on 20 December 2021 launched a [consultation](#) until 28 February 2022 on its draft RTS specifying and, where relevant, calibrating the minimum performance-related triggers for STS on-balance-sheet securitisations that feature non-sequential amortisation. The capital markets recovery package amended the Securitisation Regulation in several aspects, including creating a specific

framework for STS on-balance-sheet securitisation to ensure that the EU securitisation framework provides for an additional tool to aid economic recovery in the aftermath of COVID-19. These draft technical standards aim at providing technical clarification on these triggers.

1.26 CSDR Update

On 5 October 2021, the European Central Securities Depositories Association published an [updated version](#) of its settlement fail penalties framework. The framework applies to all central securities depositories ("CSDs") subject to the Central Securities Depositories Regulation ([EU](#) 909/2014 ("CSDR")) or equivalent legislation.

On 19 November 2021, ESMA updated its CSDR [Q&As](#) to include the following material on partial settlement functionality:

- When CSDs should start offering partial settlement functionality under Article 10 of Commission Delegated Regulation ([EU](#) 2018/1229) supplementing the CSDR with regard to RTS on settlement discipline.
- How to complete table 1 of Annex II of the RTS on settlement discipline if a CSD has the intention to use the derogation provided for.

On 1 December 2021, ESMA [announced](#) that it will begin publishing information on trading venues with the highest turnover for bonds to enable CSDs to access centralised and transparent information for the application of cash penalties for bonds under the settlement discipline framework in CSDR. ESMA plans to publish this data by 1 February 2022 and will update it quarterly.

On 17 December 2021, ESMA published another [updated version](#) of its CSDR Q&As. ESMA has amended one Q&A on how a CCP sending a settlement instruction stemming from the netting of transactions executed in various trading places should populate the 'place of trading' settlement instruction field. ESMA has also added a new Q&A on which settlement fails should be taken into account when calculating a participant's rate of settlement efficiency.

On 17 December 2021, ESMA also published a [statement](#) on its approach to the implementation of buy-in provisions under Article 7 of CSDR and Articles 21 to 28 of Commission Delegated Regulation ([EU](#) 2018/1229) (RTS on Settlement Discipline). ESMA refers to a letter it sent to the European Commission in September 2021 asking the Commission to postpone the application date of the buy-in regime, while noting the importance of the entry into force of the rest of the settlement discipline regime measures (settlement fails reporting and cash penalties) on 1 February 2022 as planned.

It also notes that the co-legislators have agreed on an amendment to the CSDR, introduced via the proposed Regulation on a pilot regime for market infrastructures based on distributed ledger technology ("DLT") which will allow the decoupling of the date of application of the buy-in regime from the penalties and reporting provisions.

This amendment will allow ESMA to develop draft technical standards to postpone the application of the buy-in regime. However, the DLT pilot regime is not expected to enter into force before the application date of the settlement discipline regime. Therefore, based on the assumption that the decoupling of the application dates of settlement discipline measures will eventually be allowed, ESMA states that it is important to take into account this upcoming legislative change when applying the CSDR settlement discipline regime until the postponement of the buy-in regime is in place. It therefore expects NCAs not to prioritise supervisory actions on the application of the CSDR buy-in regime.

1.27 SFTR Update

On 21 October 2021, the International Capital Market Association published an updated version of its [guide](#) to reporting repo transactions under both the EU and UK versions of Securities Financing Transactions Regulation ([EU](#) 2015/2365 ("SFTR")). It reflects recent updates to the SFTR validation rules and reporting schemas published by both ESMA and the UK FCA, as well as other official guidance that has been released, including ESMA's SFTR Q&As, (which were last updated in September 2021). On 17 December 2021, ESMA published updated [Q&As](#) on complying with reporting requirements under SFTR. A new Q&A has been added on how trade repositories should aggregate positions with multiple currencies.

1.28 IOSCO Outsourcing Principles, Sustainability-Related Practices and Disclosures in Asset Management and ESG Ratings

The International Organization of Securities Commissions ("IOSCO") published a set of [updated outsourcing principles](#) for regulated entities that outsource tasks to service providers on 27 October 2021. They comprise fundamental precepts and seven principles. The fundamental precepts cover issues such as the definition of outsourcing, the assessment of materiality and criticality, the application to affiliates, and the treatment of sub-contracting and outsourcing on a cross-border basis. The seven principles set out expectations for regulated entities that outsource tasks and include guidance for implementation.

On 2 November 2021, IOSCO published its [final report](#) setting out recommendations on sustainability-related practices, policies, procedures and disclosures in asset management. This guidance, drafted by IOSCO's sustainable finance task force, will help asset managers consider material sustainability-related risks and opportunities, integrate them into the decision-making process, and make disclosures so that investors understand the impact of their investments.

On 23 November 2021, IOSCO published its [final report](#) on ESG ratings and data products providers. It includes ten recommendations for regulators, ESG rating and data product providers and users of ESG ratings and data products. These are underpinned by specific guidance to assist firms and regulators when navigating the ESG ratings and data market.

1.29 Irish Investment Funds Statistics: Q3 2021

The main points to note in the Central Bank's [Q3 2021 statistics](#) issued in November 2021 are as follows:

- The NAVs of Irish-resident funds reached an all-time high of €3,774bn at end-September 2021. All fund types, except money market funds, increased their NAV during the quarter.
- The total NAV increased by 2% in Q3 2021. This increase was split between 58% net investor inflows and 42% valuation gains. The total assets under management were €4,255bn at end-September 2021.
- In bond, equity, mixed, and real estate funds, the majority of the NAV increase was driven by investor inflows, while in hedge and other funds, it was due to positive revaluations.
- While there continued to be increases in both net transactions and revaluations in holdings of equity securities, at €26bn and €18bn respectively, these gains were more modest than those seen in the previous three quarters.

1.30 Luxembourg Undertakings for Collective Investment Statistics

The main points to note in the CSSF's [November 2021](#) update for regulated Luxembourg funds are as follows:

- Total assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") increased by €31.426bn from €5,718.484bn as at 31 October 2021 to €5,749.910B as at 30 November 2021.
- The number of Luxembourg Investment Funds active in the market and regulated by the CSSF totals 3,508.
- Of the 3,508 active Luxembourg Investment Funds, 2,303 entities have adopted an umbrella structure and together have a total of 13,250 sub-funds.
- The remaining 1,205 Luxembourg Investment Funds are structured as stand-alone funds.
- As at 30 November 2021, there were a total of 14,455 fund units.
- During November 2021, there were more subscriptions than redemptions in equity funds and fixed-income funds.

In addition the number of Luxembourg RAIFs reached 1,646 as of 3 January 2022.

2 Tax

Ireland

2.1 EU Interest Limitation Rule and Investment Funds

The new EU interest limitation rule ("ILR") which come into effect for accounting periods beginning on or after 1 January 2022 will impact the tax position of asset holding companies and downstream investment structures in the EU for international investment funds. Its aim is to limit base erosion by companies through the use of excessive interest deductions and similar financing costs.

The rules applying the EU Anti-tax Avoidance Directive's ILR are contained in the Finance Act 2021 which was signed into law in December 2021. The ILR limits the net interest deductions of a company within the charge to Irish corporation tax to 30% of EBITDA (earnings before tax and before deductions for net interest expense, depreciation and amortisation) in a tax period in certain circumstances.

There are a number of provisions relevant to the Irish funds industry.

For more information, please see our update, [Irish Finance Bill 2021: Key Developments for Irish & International Business](#).

2.2 COVID-19 Specific Measures - Ireland

As noted in our update, [Irish Revenue confirm that COVID concessionary treatment extended to 31 December 2021](#), in November 2021 Irish Revenue extended concessionary measures relating to corporate tax residence and the requirement for directors to travel to Ireland and confirmed that the approach remained until the end of 2021. That concession was again extended again to 31 January 2022. This effectively means that Irish Revenue will disregard the presence of directors of Irish companies outside Ireland for corporation tax purposes where the director was restricted from

travelling as a result of COVID-19. The commentary notes that the position will be kept under review to determine whether any further extension is required but managers and funds which include non-resident individuals on the board of directors should start to plan their approach now in the event that the concessionary treatment does end in January 2022.

2.3 Overseas Mergers Involving Irish and Luxembourg Funds Exempt from Hong Kong Stamp Duty

In a recent Hong Kong Court of Appeal case on stamp duty implications arising from an overseas merger, the court held that the transfer of Hong Kong securities on a merger under Luxembourg's merger laws by way of universal succession is not chargeable with stamp duty under Hong Kong law (Nomura Funds Ireland Plc v The Collector of Stamp Revenue [2021] HKCA 1040).

In this case in 2015, Nomura Funds Ireland Plc (an Irish incorporated investment company with sub-funds including Nomura Funds – China Fund) and Nomura Funds (an investment company incorporated in Luxembourg with one sub-fund, China Opportunities) agreed to merge under Luxembourg law. China Opportunities transferred all assets and liabilities, including securities listed on the Hong Kong Stock Exchange, to Nomura Funds – China Fund as a contribution *in specie*. Nomura Funds – China Fund then issued shares to the sole shareholder of China Opportunities. The shares of the China Opportunities were then cancelled and Nomura Funds – China Fund ceased to exist.

Nomura Funds Ireland Plc unsuccessfully sought Hong Kong stamp duty relief on the transfer of Hong Kong securities on the grounds that: there was no "transfer" but a "transmission" of those securities and that it was effected by operation of Luxembourg law instead of the written merger agreement ("agreement"); and no beneficial interest in those securities passed under the agreement as the vesting of the securities amounted to a transmission or "universal succession" under Luxembourg law. The Court of Appeal, overturning an earlier court decision, held that the agreement was not a stampable instrument and there was no change in the beneficial ownership of securities. In so doing it agreed with the Luxembourg legal opinions obtained by the appellant, Nomura Funds Ireland Plc setting out their arguments.

The decision confirms that transfers of Hong Kong securities (or immovable property situated in Hong Kong) by universal succession (where the surviving entity inherits all assets and liabilities of the absorbed entity by operation of foreign law) does not give rise to any stamp duty. This is the first time a Hong Kong court has confirmed this commercially important viewpoint.

Irish and Hong Kong stamp duty legislation are both based on the original UK stamp duty legislation so it is likely that the Irish courts would come to a similar conclusion. However, it also has to be borne in mind that the stamp duty implications of an overseas merger will depend on the merger law of the foreign jurisdiction where the merger takes place and the provisions of any merger instrument. Therefore, every case has to be analysed on its specific facts.

EU

2.4 Proposed EU Directive on "Shell" Entities

On 22 December 2021, the European Commission published a proposed "Unshell" Directive to prevent the misuse of so-called 'shell' entities for tax purposes. It is aimed at entities which do not maintain sufficient substance in the EU. Such entities will be subject to additional reporting requirements and unable to access the benefits of double tax treaties and EU tax directives. Certain

entities are specifically excluded from the proposals including AIFs managed by an AIFM, credit institutions and UCITS funds.

For more information, please see our update, [Proposed EU Directive on "Shell" Entities – the Impact on International Business](#).

2.5 OECD and EU GloBE Rules

On 20 December 2021, the Organisation for Economic Co-operation and Development ("OECD") published rules on the OECD's Pillar 2 aimed at ensuring that Multinational Enterprises ("MNEs") will be globally subject to a minimum 15% tax rate from 2023 ("GloBE Rules"). On 22 December 2021, the European Commission also published a proposal for a Directive applying the GloBE Rules for EU Member States (which are quite similar with some changes particularly focusing on compatibility with EU law).

Generally, the GloBE Rules provide for a coordinated system of taxation aimed at large MNE groups defined as having at least €750 million in annual revenue in at least two of the four preceding years. MNE groups in scope should pay a minimum level of tax on income derived from every jurisdiction in which they operate. The rules create a 'top-up tax' to be applied on profits below the 15% minimum rate on a jurisdictional basis.

The OECD defines an MNE Group as having at least one group entity or permanent establishment which is located in a different jurisdiction than the "Ultimate Parent Entity" and which is taken into account in the consolidated accounts of the Ultimate Parent Entity. The EU proposal follows the same definition of an MNE Group but expands the definition to also include purely 'large-scale domestic groups'. The Commission's GloBE Rules should only be applicable where an MNE group has one or more entities or permanent establishments in an EU Member State.

The GloBE Rules' principal enforcement rules for applying the top-up tax are the Income Inclusion Rule ("IIR") and the Undertaxed Payment Rule ("UTPR"). The IIR imposes a top-up tax on the parent entity with respect to the low taxed income of group entities (referred to as "Constituent Entities"). The IIR is generally applied on a top-down basis which aims to impose the IIR at the top of the MNE Group, which normally would be the Ultimate Parent Entity. However, if the Ultimate Parent Entity does not apply the IIR, then it is imposed at one or more intermediate parent entities.

The UTPR acts as a backstop to the IIR when an entity with low-taxed income is not brought into the IIR going up the ownership chain, such as, for example, when the Ultimate Parent Entity is located in a low tax jurisdiction with no IIR in its local tax laws. The UTPR requires an adjustment at the lower group entity's level (such as a denial of a deduction) that results in an increase in the tax liability of the subsidiary to achieve the minimum 15% tax rate.

Certain excluded entities are specifically listed as outside of the rules' scope and include government entities, international organisations, non-profit organisations, pension funds, as well as investment funds and real estate funds when these investment entities are also the Ultimate Parent Entity. Certain entities directly or indirectly owned by investment funds or real estate funds, and are engaged in investing on their behalf or engaged in holding activities, i.e. earning dividends and capital gains on group subsidiaries, are also in the excluded entity category.

The GloBE Rules also contain exemptions and carve-outs. Investment funds should generally be outside of the scope provided they are the "Ultimate Parent Entity" in the structure.

Luxembourg

2.6 COVID-19 Specific Measures - Luxembourg

The Luxembourg tax authorities have confirmed extensions of the existing tax agreements for cross-border workers working from their residence countries without adverse tax implications. These COVID-19 waivers have been extended for German, French and Belgian-resident cross-border workers until 31 March 2022. As such, these non-resident cross-border employees working from home will continue to remain taxable in the Member State where they would have normally worked, i.e. Luxembourg. As for social security, the agreements with Belgium, French and Germany should continue to apply until the end of June 2022.



MAPLES
GROUP

Contacts

Dublin

Eimear O'Dwyer

Partner, Co-Head of Funds & Investment Management
eimear.odwyer@maples.com

Caitriona Carty

Partner, Funds & Investment Management
caitriona.carty@maples.com

Stephen Carty

Partner, Funds & Investment Management
stephen.carty@maples.com

Ian Conlon

Partner, Funds & Investment Management
ian.conlon@maples.com

Ronan Cremin

Partner, Funds & Investment Management
ronan.cremin@maples.com

John Gallagher

Partner, Funds & Investment Management
john.gallagher@maples.com

Philip Keegan

Partner, Funds & Investment Management
philip.keegan@maples.com

Deirdre McIlvenna

Partner, Funds & Investment Management
deirdre.mcilvenna@maples.com

Aaron Mulcahy

Partner, Funds & Investment Management
aaron.mulcahy@maples.com

Niamh O'Shea

Partner, Funds & Investment Management
niamh.oshea@maples.com

Emma Conaty

Head of Global Registration Services
emma.conaty@maples.com

Andrew Quinn

Partner, Head of Tax
andrew.quinn@maples.com

William Fogarty

Partner, Tax
william.fogarty@maples.com

Lynn Cramer

Partner, Tax
lynn.cramer@maples.com

Luxembourg

Johan Terblanche

Managing Partner, Head of Funds & Investment Management
johan.terblanche@maples.com

Michelle Barry

Partner, Funds & Investment Management
michelle.barry@maples.com

James O'Neal

Principal, Tax
james.oneal@maples.com

Jean-Dominique Morelli

Partner, Tax
jean-dominique.morelli@maples.com

Cayman Islands

Pádraig Brosnan

Partner, Funds & Investment Management
padraig.brosnan@maples.com

Hong Kong

Michelle Lloyd

Partner, Funds & Investment Management
michelle.lloyd@maples.com

London

Adam Donoghue

Partner, Co-Head of Funds & Investment Management
adam.donoghue@maples.com

Fearghal De Feu

Partner, Funds & Investment Management
fearghal.defeu@maples.com



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 that 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 2020). Our sizeable and fast growing Luxembourg legal services team cover the whole range of funds & investment management services. For more information, please visit: [maples.com](https://www.maples.com).

© MAPLES GROUP 2022

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice. Published by Maples and Calder (Ireland) LLP and Maples and Calder (Luxembourg) SARL.



MAPLES
GROUP