DUBLIN CORK BOSTON NEW YORK TOKYO

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Change of Name of the Financial Regulator

The Central Bank Reform Act, 2010 which came into effect on 1 October, 2010 provides that the Central Bank and Financial Services Authority shall be renamed "Central Bank of Ireland" and any reference in an enactment or a provision of a statutory instrument to the Irish Financial Services Regulatory Authority (as the "**Regulatory Authority**" or in any other way) shall be construed as a reference to the Central Bank of Ireland (the "**Central Bank**"). The Central Bank Reform Act, 2010 is more fully discussed in Section 4 entitled "Regulatory and Compliance."

Central Bank - Transition of Prospectus Scrutiny Function

In line with EU requirements, the Central Bank announced the commencement of a joint project with the Irish Stock Exchange ("**ISE**") to unwind the delegation of prospectus scrutiny tasks which have been carried out by the ISE on behalf of the Central Bank under a delegation arrangement since 2005. Under European law, the role of prospectus scrutiny must be returned to the Central Bank by 31 December, 2011.

Prospectus scrutiny involves the review of prospectus documents for equity, debt and closed-ended funds. It is an important function because of the need to ensure that prospectuses are compliant with relevant legislative provisions.

Short Selling of Irish Financial Stocks

In the context of the forthcoming Bank of Ireland rights issue, the Central Bank has confirmed that its approach with regard to its ban on short selling is consistent with the approach of the UK Financial Services Authority to the effect that a person cannot net off a short position in the pre-existing share capital of the Governor and Company of the Bank of Ireland with a long position in nil-paid rights when calculating its compliance with the short selling ban on Irish bank shares. The Central Bank has also clarified that this does not apply with respect to fully-paid rights.

MiFID 2

On 13 October, 2010, CESR published its second set of technical advice to the EU Commission in the context of reviewing MiFID, the Markets in Financial Instruments Directive, which entered into force in November 2007. This covers CESR's advice on standardisation and organised platform trading of over-the-counter (OTC) derivatives (Ref. CESR/10-1096), post-trade transparency standards (Ref. CESR/10-882) and client categorisation (Ref. CESR/10-1040) as well as the remaining responses by CESR (Ref. CESR/10-1254) to the EU Commission's request for additional information in relation to the review of MiFID presented in March 2010. Following a first set of technical advice published on 29 July, this second set completes CESR's technical advice on MiFID.

CESR's Consultation Papers in Relation to Simplified Prospectuses

During July, 2010 CESR issued four consultation papers in relation to Simplified Prospectuses ("**SP**") inviting responses to the consultation papers by 10 September 2010. The responses have now been received and are available to view on at www.cesr.eu.

CESR's guidelines for the transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-672).

Overall, CESR takes the pragmatic view that in most circumstances the SP can continue to be offered up until 30 June 2012, where the national law and regulation of the UCITS home State allows it. The exception to this is for new UCITS authorised after 30 June 2011, where the KII should be prepared from the outset. In addition, a UCITS that continues to use the SP after 1 July 2011 may adapt it to reflect the requirements of KII.

CESR's guide to clear language and layout for the Key Investor Information document (KII) (CESR/10-532).
The rules set a framework for facilitating an effective document. It gives guidance on the use of clear language and guidelines on how to present the information. The guide is intended to assist in the preparation of a KII by giving pointers to widely-accepted good practice.

CESR's level three guidelines on the selection and presentation of performance scenarios in the Key Investor Information document for structured UCITS (CESR/10-530).
In order to ensure comparability between structured UCITS, the consistency in the choice of prospective scenarios and the format of the presentation of those scenarios, CESR has developed guidelines with a view to harmonising the selection and presentation of scenarios.

CESR's template for the Key Investor Information document (CESR/10-794).
The guidelines show the type of contents and layout that UCITS management companies would be expected to follow for a standard UCITS.

CESR Global Exposure and Counterparty Risk Guidelines for UCITS and the Central Bank's New Leverage Disclosure Requirements for UCITS

CESR Global Exposure and Counterparty Risk Guidelines for UCITS

On 28 July 2010, CESR published a feedback statement on the proposed guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-79). The guidelines included the detailed methodologies to be followed by UCITS when they use the commitment or the Value at Risk (VaR) approach.

In the feedback statement, CESR noted that in general, the respondents were broadly supportive of the approach proposed by CESR. Respondents to the consultation welcomed the conversion methodologies for the different types of financial derivative instruments for UCITS using the commitment approach for the calculation of the global exposure. CESR's proposal concerning the VaR approach was broadly welcomed by stakeholders who nevertheless expressed some degree of disagreement with the requirement to monitor the leverage for UCITS using the VaR for the calculation of the global exposure. CESR also consulted on its initial views on specific guidelines to be applied to a certain category of structured funds. The feedback from the public consultation resulted in a general request to develop such a methodology. Therefore, CESR will carry out further work to assess whether it would be appropriate for certain types of structured UCITS to use other methodologies to calculate the global exposure.

The Central Bank's New Leverage Disclosure Requirements for UCITS

On 13 September 2010, the Central Bank clarified its requirements in relation to the disclosure in fund documentation relating to the level s of leverage employed by UCITS.

Value at Risk:

Following CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS, issued on 28 July 2010, the Central Bank requires that the expected level of leverage should be disclosed and that this should normally be sufficient. If there is the possibility that leverage could exceed the expected level in a material way, this will also need to be disclosed as per CESR's advice.

Commitment approach:

It should be clear whether the fund is leveraged or not. Details of the maximum limit being availed of should be disclosed. However, the Central Bank has also indicated that if the UCITS is using FDIs solely for hedging purposes, it will then expect that any leverage will be minimal. For this reason, the Regulator believes that it is not coherent to then insert the maximum leverage limit which a UCITS using the commitment approach may avail.

Re-domiciliation Commencement Order & Approval of the First Re-Domiciliation of an Investment Trust

The commencement orders relating to the Companies (Miscellaneous Provisions) Act 2009 to facilitate the efficient redomiciling of funds from prescribed jurisdictions to Ireland were signed on 7 September, 2010.

On 1 October this year, Dillon Eustace successfully obtained approval from the Central Bank for the first re-domiciliation of an investment trust from the Cayman Islands to Ireland. The re-domiciliation in question involved the migration of a trust registered with the Cayman Islands Registrar of Trusts to Ireland to be established and authorised as a qualifying investor fund by the Central Bank pursuant to the Unit Trusts Act, 1990

Voluntary Corporate Governance Code for Directors

On 13 September 2010, the Central Bank informed the Irish Fund's Industry Association ("**IFIA**") that it wishes to introduce a new procedure for director applications from individuals who hold more than 30 directorships (including Irish regulated and unregulated companies and all non-Irish companies). This arises out of the Central Bank's concern regarding the high number of directorships held by some individuals.

The Central Bank has requested that the IFIA develop a voluntary corporate governance code for financial services firms in the funds industry in Ireland and that the code will include recommendations regarding the optimal number of directorships for individuals. Further, the Central Bank has stated that directors who hold more than 30 directorships are obliged to bring these matters to the attention of the boards/firms proposing them.

Funds Policy Update - 3/2010

On 31 August 2010, the Central Bank issued Policy Note -3/2010 in respect of: (a) charging of fees and expenses to capital in fixed income funds; and (b) names of sub-funds within umbrella funds.

Charging of fees and expenses to capital in fixed income funds

The Central Bank has relaxed its requirements in relation to the ability of Irish regulated funds to charge fees and expenses to capital. Previously only open-ended distributing fixed income funds were permitted to charge fees and expenses to capital. Going forward with effect from 1 September 2010, all funds will be permitted to charge fees and expenses to capital subject to meeting certain disclosure requirements as outlined in Policy Note -3/201.

Names of sub-funds within umbrella funds

Currently, it is not permitted to refer solely to the name of an investment manager in the name of a collective investment scheme or in the name of a sub-fund within an umbrella fund. However the Central Bank has, with effect from 1 September 2010, amended this policy in the case of umbrella funds, as follows:

The name of an investment manager will be permitted in the title of a sub-fund where: (a) the name of the umbrella fund contains the name of the promoter; or (b) the name of the umbrella fund contains the brand name of the promoter. In both cases, where a supplement to the prospectus is published in respect of the sub-fund, the name of the promoter must be stated clearly on the supplement cover.

Dodd-Frank Wall Street Reform (U.S.)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Act**") was signed into law by the US President on 21 July, 2010.

Non U.S. investment advisers to private funds may be required to register with the SEC and comply with certain rules and requirements that are applicable only to SEC registered investment advisers. These requirements include rules and provisions relating to performance fee arrangements, custody of client assets, marketing of advisory services and products, disclosures to the SEC, clients and investors on Form ADV, establishment of a compliance program and appointment of a chief compliance officer.

However, the Act exempts certain foreign private advisers from SEC registration and reporting/record keeping requirements. To qualify, advisers must meet all of the following criteria:

- have no place of business in the United States;

- have fewer than 15 clients and investors in the United States in private funds advised by the adviser at any time;
- have assets under management attributable to U.S based clients and investors in private funds it advises of less than $25 million or such higher amount as the SEC may, by rule, deem appropriate; and
- neither hold itself out to the public in the United States as an investment adviser, nor act as a business development company or an investment adviser to a registered investment company.

Accordingly, any non U.S. adviser with more than 14 U.S. clients and U.S. investors in private funds, or that manages $25 million or more of the assets attributable to U.S. clients and U.S. investors, may be required to register with the SEC if they do not qualify for any other exemption.

BANKING AND CAPITAL MARKETS

In this issue:-

- **European Communities (Statutory Audits) (Directive 2006/46/EC) Regulations 2010**
- **Extension of the Government Bank Guarantee under the Credit Institutions (Eligible Liabilities Guarantee) Scheme ("ELG Scheme")**
- **NAMA Update: Changes to the Minimum Threshold**
- **Statutory Mortgage Arrears Code**
- **The Consumer Credit Regulations 2010**
- **CP41 Corporate Governance Code expected to issue in October 2010 ("CP 41")**
- **New Strategy on Banking Supervision Published**

European Communities (Statutory Audits) (Directive 2006/46/EC) Regulations 2010

The Minister for Enterprise, Trade and Innovation has published the European Communities (Statutory Audits) (Directive 2006/46/EC) Regulations 2010 (the "**Regulations**") to give effect to Directive 2006/46/EC on statutory audits.

The Regulations provide for an approval process for statutory auditors. They also provide for the establishment of a public register of auditors, contain detailed provisions with regard to public oversight of statutory auditors and set out provisions regarding the independence of auditors.

Of particular interest are the provisions requiring public-interest entities to establish audit committees. The Regulations also contain provisions in respect of the removal of auditors, the independence of auditors and the disclosure of auditor's remuneration in company accounts. For the purposes of the Regulations "public-interest entities" are defined as:

(a) companies whose transferable securities are admitted to trading on a regulated market of any Member State (in Ireland this means the Main Securities Market of the Irish Stock Exchange);

(b) credit institutions; and

(c) insurance undertakings.

Impact on SPVs with listed securities

Special purpose vehicles (**SPVs**) whose debt securities are listed on a regulated market of an EU Member State would be characterised as a "public-interest entity" for the purposes of the Regulations. However, as set out below, issuers of asset back securities are specifically excluded from the definition.

Exemption for Issuers of ABS

SPVs which, as their sole business, issue "asset-backed securities" (as defined below) may avail of an exemption from the requirement to establish an audit committee under the Regulations.

The definition of "asset-backed securities" is derived from Article 2 (5) of Commission Regulation (EC) No 809/2004 and includes securities which (a) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable thereunder or (b) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.

An SPV wishing to avail of this exemption must, in accordance with the Regulations, prepare and disclose a statement setting out the reasons why it considers the establishment of an audit committee by it is not appropriate and, accordingly, why it has availed itself of the exemption. Such a statement must be included in any annual report published by it, or in an annual return or other periodic statement delivered by it to a competent authority. We understand that it is expected that Irish audit firms will suggest the form of statement that will be required.

Exemption for Subsidiaries

There is also an exemption for a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC but only if the preceding requirements of the Regulations are complied with by a parent undertaking (within the meaning of that Article) of the first-mentioned undertaking in such a manner as ensures that any statutory audit of the first-mentioned undertaking comes within the purview of the relevant audit committee.

Extension of the Government Bank Guarantee under the Credit Institutions (Eligible Liabilities Guarantee) Scheme (“ELG Scheme”)

The ELG Scheme was introduced in December 2009 to replace the Credit Institutions (Financial Support) Scheme 2008 (the “**2008 CIFS Scheme**”) which expired on 29 September 2010.

The ELG Scheme was established to guarantee specific issuances of eligible debt securities and deposits (as set out below) issued by the participating institutions or, in the case of deposits, placed with the participating institutions during the relevant issuance period, referred to under the ELG Scheme as ‘eligible liabilities’.

The issuance period (or window) for the eligible liabilities is the period during which a guaranteed bank deposit can be made with a participating institution or guaranteed debt can be issued by a participating institution.

Following the commencement of SI 470 of 2010 on 29 September 2010, the issuance period of the ELG Scheme will now continue to 31 December 2010 in respect of the full range of eligible liabilities under the Scheme (including corporate deposits and other liabilities of less than three months in duration and interbank deposits which was approved by the EU Commission on the 21 September 2010). The period for retail deposits was already extended to 31 December 2010 at the end of June and has been approved by the EU Commission. In addition, the ELG Scheme rules have also now been updated as of 30 September 2010.

NAMA Update: Changes to the Minimum Threshold

On the 30 September 2010, a number of changes were announced to the way that loans will be transferred to the National Asset Management Agency (“**NAMA**”) from the five participating institutions. A key change was that the total exposure threshold for a debtor’s loans to be transferred to NAMA was raised from €5 million to €20 million. This change only applies to Allied Irish Bank and Bank of Ireland and will mean that approximately 650 debtors with property-related debts of between €5m and €20m in these two banks, accounting for €6.6 billion of the aggregate €80 billion of NAMA eligible loans, will remain with these participating institutions.

Going forward it is anticipated that the remaining loans will be transferred to NAMA on an institution by institution basis with the remaining Anglo Irish Bank loan due to transfer by the end of October 2010 and the rest of the loans expected to transfer by year-end.

Statutory Mortgage Arrears Code

The Code of Conduct on Mortgage Arrears ("**CCMA**") was first introduced on 27 February 2009 to provide additional protections to consumers who are in mortgage arrears and to help ensure that all genuine cases are handled positively and sympathetically by lenders. An amendment was introduced to the CCMA in February 2010 which extended the time lenders must wait before repossessing a property from six months to twelve months. The CCMA applies to all regulated mortgage lenders, except credit unions.

Following the publication of the interim report by the Expert Group on Mortgage Arrears and Personal Debt in July this year, the Central Bank & Financial Services Authority of Ireland has published CP 46: Review of Code of Conduct on Mortgage Arrears, a consultation paper outlining new recommendations to be incorporated into the CCMA together with a draft revised CCMA.

The Consumer Credit Regulations 2010

The European Communities (Consumer Credit Agreements) Regulations 2010 S.I. 2010 / 281 (the "**Regulations**") was transposed into Irish law on 11 June 2010. The Regulations give effect to the provisions of Directive 2008/48/EC on Credit Agreements for Consumers (the "**CCD**"), the broad aim of which is to harmonise laws governing consumer law across Europe while maintaining high levels of consumer protection.

The Regulations broadly apply to credit agreements offered to "consumers" of more than €200 and less than €75,000. The term "consumer" is defined under the Regulations as "a natural person who is acting, in the course of a transaction to which these Regulations apply, for purposes outside his or her trade, business or profession".

Please feel free to contact any member of our Banking & Capital Markets team for further information in relation to the Regulations and the key provisions thereof.

CP41 Corporate Governance Code expected to issue in October 2010 (“CP 41”)

Further to our update in our Spring Newsletter, It is expected that the Central Bank will issue its Corporate Governance Requirements for Credit Institutions and Insurance Undertakings in final form during October 2010 following the extensive comments on Consultation Paper CP41 earlier this year which created significant debate.

While the Consultation Paper concerned itself with the governance of banks and insurance firms, there were some concerns that it might be extended to cover MiFID investment firms. The Irish Funds Industry Association has separately engaged with the Central Bank regarding the development of a Code of Practice for that industry, which it is expected will be in place by the end of the year.

It is not anticipated that there will be a further round of public consultations prior to final issuance. The Code, once implemented, is likely to have significant implications for both regulated firms and non-executive directors alike including the possible imposition of a ceiling on the number of directorships held by directors of regulated banks and insurance undertakings which could have cost and supply implications for directorships, depending on the application of proportionality.

New Strategy on Banking Supervision Published

On 21 June 2010, the Central Bank of Ireland published a new strategy in relation to banking supervision in Ireland. The paper, entitled “*Banking Supervision: Our New Approach*”, outlines how retail, wholesale and international banks will be regulated in Ireland. It highlights the four major items of work which the Central Bank proposes to undertake this year with a view to obtaining a greater understanding of the progress which banks have made in reforming themselves in the aftermath of the financial crisis. It is hoped that this will provide a greater insight into the nature and pace of change in banking practices in the market.

Please feel free to contact any member of our Banking & Capital Markets team for further information in relation to any of the above matters.

▣ CORPORATE & M&A

In this issue:-

- **Endeavours Obligations**
- **In the Matter of Cognotec Limited (In Receivership)**

Endeavours Obligations

Introduction

The terms “all reasonable endeavours”, “reasonable endeavours” and “best endeavours” are regularly used in the drafting of commercial agreements and contracts. Despite this widespread use, the actual obligations imposed by each of these terms are unclear. Recent UK case law has provided further guidance on the obligations imposed by parties contracting to use “all reasonable endeavours”.

Please see the Dillon Eustace publication entitled article “Endeavours Obligations” for further information on this matter.

In the Matter of Cognotec Limited (In Receivership)

A recent High Court judgement in the above matter has provided clarification on whether transactions are voidable by companies under section 60 (14) of the Companies Act, 1963 in circumstances where the necessary statutory declaration under section 60 (2) has not been filed by a company within the statutorily prescribed time limit and the person seeking to rely and enforce the transaction is not actually aware of the company’s default.

Section 60 (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, the purchase of its own shares. Under section 60 (14), a transaction in breach of section 60 is voidable at the instance of the company against any person with notice of the facts which constitute the breach. The prohibition under section 60 (1) does not apply to financial assistance given by a company which has complied with the statutory conditions under section 60 (2) (generally known as the “whitewash procedure”).

In the present case Barclays Bank Ireland plc ("the Bank") provided a loan to shareholders to purchase the shares of an exiting shareholder in Cognotec Limited ("the Company"). The loan was secured by a guarantee from the Company and a debenture over its assets. The whitewash procedure was complied with except for the delivery by the Company of the statutory declaration to the Registrar of Companies within 21 days after the financial assistance was given. Four years later the Company sought to avoid the transaction on the basis of this late filing. The Bank was unaware that the statutory declaration was not filed on time until such time as a receiver was appointed to the Company earlier this year.

The receiver brought an application under section 316 of the Companies Act, 1963 seeking a declaration that the security provided to the Bank by the Company was not invalidated by the failure of the Company to file the statutory declaration within 21 days as the Bank had no notice of this breach. Mc Govern J. upheld the validity of the charge and accepted that the Bank in this case did not have actual notice of the breach and that any failure to deliver the statutory declaration for registration within the time allowed merely taints the validation procedure and will only become relevant if the Bank had actual notice of this failure.

REGULATORY & COMPLIANCE

In this issue:-

- **Central Bank Reform Act 2010**
- **Data Protection - New Standard Contractual Clauses**
- **Data Security Breach Code of Practice**

Central Bank Reform Act, 2010 – Update

On 29 September, 2010 the Minister for Finance, Mr Brian Lenihan, TD, signed a Commencement Order bringing the Central Bank Reform Act, 2010 ("the Act") into law with effect from 1 October, 2010.

The Act is the first of a three-stage legislative process to create a new fully-integrated structure for financial regulation.

A second Bill, to be published during the autumn legislative session, will enhance the powers and functions of the restructured Central Bank in relation to:

- the prudential supervision of individual financial institutions;
- the conduct of business, including the protection of consumer interest; and
- the overall stability of the financial system.

A third Bill will consolidate the existing statutory arrangements for the Central Bank and financial regulation in the State.

The Act creates a single, fully-integrated Central Bank of Ireland with a unitary Board - the Central Bank Commission which is chaired by the Governor of the Bank. The Irish Financial Services Regulatory Authority is being dissolved and most of its existing functions merged into the new structure. The Act also provides for:

- the application of a fitness and probity regime to those occupying key positions within financial service providers; and

- a relaxation of the lending limits set out in section 35 of the Credit Union Act, 1997 in an effort to facilitate borrowers who have run into difficulties in repaying their loans

and need to have them rescheduled to allow for repayment over a longer period of time. The new lending limits are accompanied by measures to balance the increased flexibility in relation to rescheduling.

Certain provisions of the Act are not being commenced at this stage.

Data Protection - New Standard Contractual Clauses

The EU Commission has approved new standard contractual clauses on the transfer of data to data processors established in third countries. The difference between the new clauses and the previous clauses is that the new clauses include provision for the onward appointment of sub-processors being appointed by data processors in Third Countries. This is a welcomed development in the area of data protection. The new clauses came into force on 15 May, 2010.

For further details please contact David Nolan in Dillon Eustace

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Data Security Breach Code of Practice

In July 2010 the Data Protection Commissioner approved the Personal Data Security Breach Code of Practice ("the Code") under Section 13 (2) (b) of the Data Protection Acts, 1988 and 2003.

In summary the Code, which is available on the Commissioner's website, states that where there is a loss of control of personal data by a data controller it must be reported to the Commissioner within **two working days** of the data controller becoming aware of the incident, except in a limited number of circumstances.

The exceptional circumstances include –

- the commence where the data has been securely encrypted;

- the incident has been reported without delay to the affected data subject(s) and the loss of personal data affects less than 100 data subjects and does not include sensitive personal data or personal financial data that could be used to carry out identity theft.

Data controllers, subject to the reporting requirements, must provide a detailed report of the incident setting out:

- the amount and nature of the personal data that has been compromised;
- what action is being taken to secure and / or recover the personal data that has been compromised;
- what actions are being taken to inform those affected by the incident or reasons for the decision not to do so;
- what actions (if any) are being taken to limit damage or distress to those affected by the incident;
- a chronology of the events leading up to the disclosure and details of the measures being undertaken to prevent repetition of the incident.

All incidents of loss of control of personal data in manual or electronic form by a data processor must be reported to the relevant data controller as soon as the data processor becomes aware of the incident.

The Code applies to all categories of data controllers and data processors to which the Data Protection Acts, 1988 and 2003 apply.

INSURANCE LAW

In this issue:-

- **Central Bank Inspections into Charges and Premium Rebates**
- **Issues Identified in Themed Inspections into Mortgage Referrals, Home Insurance Claims and Motor Insurance Renewals**

Central Bank Inspections into Charges and Premium Rebates

Following suspected breaches of regulatory requirements, the Central Bank entered into a settlement agreement with effect from 15 June 2010 with an insurance broker.

The breaches, which were discovered during the course of the Central Bank's Themed Inspections into 'Charges and Premium Rebates in the Insurance Intermediary Sector', relate to the firm failing to act professionally in the best interests of its customers during the period 1 August 2004 to 31 October 2007. The issue relate to the firm inadvertently applying broker fees to the policies of some customers which were in excess of the maximum fees advised on the firm's terms of business document resulting in those customers being overcharged; and failing to have adequate systems and controls in place to ensure compliance with the requirements of the Consumer Protection Code and Handbooks.

In the settlement agreement, the Central Bank sought to remind all regulated firms that the Central Bank will not accept a situation whereby any customer is charged any amount in excess of that stated in the firm's terms of business.

Issues Identified in Themed Inspections into Mortgage Referrals, Home Insurance Claims and Motor Insurance Renewals

On the 22 June 2010, the Central Bank published the findings of three themed inspections of intermediary and insurance firms, which commenced in 2009 and focused on compliance by firms with the requirements of the Consumer Protection Code ("the Code") under each of the following areas; (a) review of mortgages referred to specialist lenders by mortgage intermediaries; (b) home insurance claims; and (c) motor insurance renewals.

The Central Bank inspected nine firms, representing the largest firms in terms of motor insurance renewals. In the majority of cases it was found that firms are processing motor insurance renewal documentation in line with regulatory requirements. However there were a very small number of cases where the 15 day rule for issuing renewals had been breached and in some cases it was found that actual renewal documentation issued did not contain some information required by the regulations.

TAX

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- **Funds - An Alternative to NRDS**
- **Ireland – A Key Location for Russian Structured Finance Deals**

Funds - An Alternative to NRDS

Prior to the enactment of the Finance Act 2010, Irish regulated funds were required to deduct exit tax when making a payment to an investor unless the funds were in possession of a declaration by the investor to the effect that the investor is either not resident or ordinarily resident in Ireland for tax purposes (non-resident declarations or “NRDs”) or is an exempt Irish investor. However as the vast majority of Irish domiciled funds in the international funds sector are distributed solely to non-Irish residents, it was considered that those requirements presented a disproportionate administrative burden on industry. Consequently the Finance Act 2010 introduced new measures that permit the above exemption in respect of non-resident investors to apply where appropriate equivalent measures are put in place by the fund to ensure that the investor is not resident in Ireland.

As the requirement for Irish funds to include the NRD was seen as administratively burdensome, the application and introduction of the waiver is a welcome development and follows extensive engagement with the Department of Finance and Revenue Commissioners by the Irish Funds Industry Association Tax Working Group (of which David Lawless and Sean Murray are both members) and Transfer Agency Committee.

Please see the Dillon Eustace publication entitled article “Funds - An Alternative to NRDs Equivalent Measures” for further information on this matter.

Ireland – A Key Location for Russian Structured Finance Deals

In recent years Ireland has emerged as a key jurisdiction for the establishment of special purpose vehicles (SPVs) for a variety of Russian structured finance transactions.

Please see the Dillon Eustace publication entitled article “Ireland – A Key Location for Russian Structured Finance Deals for details on the key reasons for selecting Ireland as a

location for establishing an SPV for Russian deals. The publication also contains details of the legal and taxation regime applicable to Irish SPVs.

LISTINGS

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- **Market Abuse Filings – Transactions by Directors and Persons Closely Associated with Directors**
- **ISE adopts New Rules on Corporate Governance**
- **Listings Update**

Market Abuse Filings – Transactions by Directors and Persons Closely Associated with Directors

The requirements of the Market Abuse Directive and Market Abuse (Directive 2003/6/EC) Regulations (the "**MAD Regulations**") apply to all shares listed on the Irish Stock Exchange (the "**ISE**"). One of the requirements of the MAD Regulations is the notification of all transactions and interests of Directors and persons closely associated to them, in shares of a listed fund, irrespective of the size of the transaction. Such interests are notifiable under strict reporting timelines using Schedule 11 forms.

The ISE has advised that a strict approach will be taken with immediate effect in respect of any late filings of such notifications. In brief, any transaction in listed shares by a Director of a listed fund, or by a person closely associated with a Director, must be notified by the relevant person to the Fund within 4 business days of the relevant transaction. The transaction must then be notified by the Fund to the ISE by the end of the next business day.

Please see the Dillon Eustace publication entitled article "Market Abuse Filings – Transactions by Directors and Persons Closely Associated with Directors" for further information on this matte.

ISE adopts New Rules on Corporate Governance

On 1 July, 2010 the Irish Stock Exchange ("**ISE**") issued its Consultation Paper on the implementation of a revised corporate governance code for Irish listed companies. The Consultation Paper proposed that the Code applicable to Irish listed companies should

mirror all aspects of the UK Corporate Governance Code (regarded internationally as being one of the pre-eminent codes on corporate governance). There are also proposals to implement the recommendations of the Report commissioned by the ISE and the Irish Association of Investment Managers ("**IAIM**").

The ISE issued a press release on 29 September, 2010 setting out that the ISE requires Irish listed companies to comply or explain against the provisions of the UK Corporate Governance Code issued in May, 2010 and that additional corporate governance provisions arising from recommendations contained in the ISE/IAIM commissioned Report will come into force later this year. Consultation on the exact nature of these additional provisions is ongoing, but these new provisions, which will be included in the ISE Listing Rules, will apply to Irish listed companies with financial year's commencing on or after 1 January, 2011.

Listing Update

Dillon Eustace continues to act as leading sponsor to investment funds listing on the ISE, representing 35% of all new listing applications in 2009

InProp Capital LLP, a UK based fund manager has established its first Irish QIF, inProp Institutional Investment Fund with a subfund in Prop UK Commercial Property Fund. The subfund listed Class B Shares on the 10th September, 2010. The ungeared, open ended subfund has been designed to appeal to institutional investors seeking a diversified and liquid exposure to real estate. It also addresses issues that have recently been problematic for other forms of property investment. It will invest in property index futures and gilts to provide returns with a better property tracking error and lower volatility than REITs, and greater liquidity and lower costs than property trusts.

Hellerup Invest, L.P., a limited partnership formed and registered in Scotland, listed Units on the on the 09th September, 2010. The Partnership aims to achieve long term returns by investing its net assets anywhere in the world in private market assets including private equity, private debt, private real estate and private infrastructure assets. The majority of cash invested in the [Fund] will be used to purchase UK Government issued gilt-edged securities and treasury bills. Partners Group Management IX Limited was appointed by the Partnership to act as General Partner and is a wholly owned subsidiary of Partners Group Holdings AG, a global alternative asset management firm specialising in private equity, private debt, private real estate, and private infrastructure.

Goldentree High Yield Value B Portfolio, a segregated portfolio of GoldenTree High Yield Value Fund Offshore PLC (the "**Fund**"), listed further shares in its Value B Portfolio on the 06th September, 2010. The investment objective of the Fund is to achieve superior returns by investing on a long-only basis in primarily public ad private high-yield non-investment grade and nonrated debt securities.

EACM/Mellon Absolute Return (Dublin) Fund, a subfund of EACM/Mellon Multi-Strategy Funds Plc, listed Class A-1 & Class D-2 Shares on the 04th August, 2010. The subfund seeks to generate consistent long-term capital appreciation with moderate volatility and moderate correlation to global equity and fixed income markets.

Tokio Marine Japanese Equity Focus Fund, a newly created subfund of Tokio Marine Funds Plc, listed Classes A, B, C, D, E and F shares on the 31st August, 2010. The investment objective of the subfund is to achieve a return in excess of the TOPIX Total Return Index (the "Index") and to maximise middle to long term growth through investment in listed stocks in Japan.

Iveagh Newcits Fund, sub fund of Iveagh Global Strategies Plc, listed Y Sterling Class and Y Dollar Class shares on the 03rd September, 2010. The Sub-Fund seeks to achieve absolute returns by investing primarily in a portfolio of open-ended funds that are compliant with the UCITS Directive, enabling the Sub-Fund to profit from opportunities across different hedge fund styles.

A number of subfunds of the GAM Star Funds plc listed additional classes throughout this period. The active subfunds were:

GAM Star Emerging Market Rates
GAM Star Pharo Emerging Market Debt & FX
GAM Star Absolute Global Emerging Markets
GAM Star Discretionary FX
GAM Star China Equity
GAM Star Diversified Market Neutral Credit

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