

Funds
Quarterly Legal,
Regulatory & Tax
Update

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DILLON  EUSTACE

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

▣ Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

The Third Anti-Money Laundering Directive was transposed into Irish law on 5 May, 2010 by the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (the “CJA Act 2010”) and has been effective as of 15 July, 2010.

The CJA Act 2010 introduced the following important changes for designated persons:

- ▣ the definition of money laundering has widened to include the proceeds of any criminal conduct, however minor;
- ▣ the terminology of “Know Your Customer” has been replaced by “Customer Due Diligence” (“CDD”);
- ▣ the level of CDD required will be determined using a risk based approach. This can range from “simplified” where there is a low risk of money laundering or terrorist financing to “enhanced” where there is high risk of money laundering or terrorist financing;
- ▣ there are enhanced obligations to identify the “beneficial owner” whereby the designated person must ensure that they take reasonable measures to understand the ownership and control structure of the client;
- ▣ there is a new requirement to identify non domestic politically exposed persons (“PEPs”) i.e. those persons in a prominent public position and their families or close associates;
- ▣ those persons who meet the definition of “trust and company services provider” will need to be authorised;
- ▣ a guard at superintendant level or higher and/or a District Court judge has the power to direct a designated person not to carry out a specified service for a specific timeframe where a customer is subject to investigation;
- ▣ the number of offences that can arise under the CJA Act 2010 are significantly greater than under the old legislation; and

- ▣ the Minister for Justice and Law Reform, in conjunction with the Minister for Finance, can approve the Guidance Notes to be used by designated persons. A court can have regard to these Notes when determining if a designated person took all the appropriate measures.

In relation to the Guidance Notes, the Financial Regulator (also now referred to as the “Central Bank”) is collectively meeting with the various industry representative bodies on a weekly basis to review the draft Core Guidance Notes, which are expected to be finalised by the end of October, 2010. Any changes made in the Core Guidance Notes will then be reflected in the Sectoral Guidance Notes and the Financial Regulator will engage with the various industry representative bodies to finalise same.

If you would like further information on anti-money laundering requirements Dillon Eustace regularly advises on all aspects thereof and provides training sessions on this topic. Training can be held either at Dillon Eustace’s office at 33 Sir John Rogerson’s Quay, Dublin 2 or in house training can be provided at a venue of your choosing.

▣ UCITS, Non-UCITS & Hedge Funds

(a) EC’s Draft Directive on Alternative Investment Fund Managers

As previously set out the draft directive (the “Directive”) on Alternative Investment Fund Managers (“AIFM”) covers Non-UCITS funds including hedge funds, private equity and commodity and aims to create a harmonised regulatory and supervisory framework for AIFM within Europe.

The Directive will require all applicable AIFM to be authorised and subject to harmonised regulatory standards on an ongoing basis. It will also increase the reporting and transparency of AIFM and the funds they manage for investors and public authorities. The aim is to improve Member States macro prudential oversight of the funds sector and take harmonised action where appropriate with regard to the proper functioning of financial markets.

It is proposed that the Directive will:

- ▣ Adopt an ‘all encompassing’ approach to ensure that no significant AIFM is outside of regulation and oversight, while providing exemptions for much smaller managers. It will only apply to AIFM managing a portfolio of €100 million plus. A higher threshold of

€500 million applies to AIFM not using leverage (and having a five years lock-in period for their investors) as they are not regarded by the EC as posing systemic risks. According to analysis by the EC, a threshold of €100 million implies that about 30% of hedge fund managers, managing almost 90% of assets of EU domiciled hedge funds, would be covered by the proposed Directive;

- ▣ Aim to regulate major sources of risks in the alternative investment value chain by ensuring that AIFM are authorised and subject to ongoing regulation and that key service providers, including depositaries and administrators, are subject to robust regulatory standards, as is currently the situation in Ireland;
- ▣ Increase the transparency of AIFM and the funds they manage for supervisors, investors and other key stakeholders;
- ▣ Ensure that all regulated entities are subject to governance standards and have robust systems in place for the management of risks, liquidity and conflicts of interest;
- ▣ Permit AIFM to market funds to professional investors throughout the EU subject to compliance with regulatory standards; and
- ▣ Grant access to the European market to third country funds after a transitional period of three years. The EC have said this is to allow the EU to check whether the necessary guarantees are in place in the countries where the funds are domiciled (with respect to among others equivalence of regulatory and supervisory standards and exchange of information on tax matters).

The Directive is subject to a co-decision process which includes the ECON Committee of the European Parliament and the Council of Ministers Working Group. The ECON Committee of the European Parliament appointed a Rapporteur (MEP Jean-Paul Gauzes) who is responsible for guiding the Directive through Parliament.

In October, 2009 the IFIA reported that the European Fund and Asset Management Association (“EFAMA”) AIFM Working Group on which the industry participates reached broad agreement on the issues they had been considering:

- ▣ Agreement on a level playing field, but as of yet without clarity on impacts for closed ended, listed funds passported under the prospectus directive or securitization vehicles (discretionary managed fund versus company issues);
- ▣ Definition of management services aligned to UCITS Annex II;
- ▣ Capital requirements aligned with UCITS with a similar cap;
- ▣ Valuation to be a function as per UCITS model;
- ▣ Depositary rules to follow current UCITS requirements and for there not to be full liability;

- ▣ Delegation requirements to be more flexible as current UCITS requirements, allow for delegation of portfolio / investment management to third country non AIFM entities;
- ▣ To make the leverage requirements much more flexible; and
- ▣ Third country funds, to allow private placement and reverse solicitation according to national rules to continue, but not have provision for an EU passport.

MEPs of the European Parliament's ECON have voted in favour of the Parliamentary version of the EU's AIFM and European finance ministers have agreed to give the Presidency the mandate to negotiate on behalf of the Council with Parliament.

The three-way ("trilogue") discussions between representatives of the European Parliament's ECON (Economic and Monetary Affairs) Committee, the Presidency of the Council of the European Union and the European Commission have now begun.

On the negotiating table are the two differing versions of the draft Directive, approved in May by ECON and the Economic and Financial Affairs ("ECOFIN") Council, part of the Council of the European Union. The ECON team is understood to include the chairwoman of ECON, Sharon Bowles, the rapporteur, Jean-Paul Gauzès, and the six shadow rapporteurs taken from the main political blocs in the European Parliament. The Council is represented by the Belgian government as the President of the Council of the EU. The Commission officials present at the discussions are there to assist the parties agreeing on a compromise text. But they will naturally favour any wording which backs up their original version of the draft Directive, published in April, 2009.

Where there is already broad agreement between the texts, such as on registration and authorisation of EU managers, those areas will be incorporated immediately into the new compromise text, drafted by the EC. This will leave the negotiating teams free to discuss solutions to areas where there is disagreement – including the issue of third countries. The other controversial areas include: valuation; depositaries; scope; leverage; remuneration; delegation; capital requirements; and short selling.

In order to reconcile the different approaches taken, the groups may agree to adopt either the ECON or Council position on a particular issue. Alternatively, they may agree to adopt a compromise position that combines elements of both texts.

The aim will be for all the issues to be resolved, and majority backing effectively secured, before the compromise text is finally voted on. Following several postponed European Parliament votes on the Directive through the summer and into September there has been recent activity from the Belgian Presidency in an attempt to secure a compromise regarding

the Directive with a vote now scheduled to take place at the Parliament Plenary session on 18 October.

In preparation for this vote and in an ongoing attempt to reach agreement the Belgian Presidency has released several compromise texts.

The latest texts do not include any detail on either requirements for marketing or private placement of 3rd country funds/managers or on requirements relating to Private Equity. The treatment of 3rd country funds is the most significant unresolved issue in the ongoing negotiations with there still being divergent views between countries within the European Council.

It is understood that the primary differences relate to the provisions to allow private placement to continue, possibly for a limited period, subject to certain conditions and the possibility of a European marketing passport, under certain conditions, for 3rd country funds.

Once the text has been approved by Parliament, it will pass to the next meeting of ECOFIN, which would be expected to adopt it.

In the unlikely event of a simple majority of MEPs voting against the eventual text, there would follow a second reading, a process limited to three months, during which a further compromise version of the Directive would need to be drafted and agreed upon. However, all parties to the trilogues have stated a preference for a First Reading passage.

Once Parliament and Council have voted in favour of the Directive, it will pass to the next stage, which is its implementation into national law. This process is expected to last until 2012, when the Directive would come into force.

For detailed information on the Directive including how it may impact your business, please contact Donnacha O'Connor in Dillon Eustace.

(b) Disclosure in Complex UCITS Funds

There is no further update in respect of the date in which the Financial Regulator's proposed changes to Guidance Note 3/07 "Structured Products and Complex Trading Strategies – Prospectus Disclosure Requirements" will be implemented.

The proposed changes included the insertion of the following upfront disclosures in a prospectus:

- ▣ The underlying exposure. This should give an indication of the underlying asset class or trading strategies. It should also state whether the exposure is leveraged and will result in a long/short exposure. An example would be “*the fund has a direct and/or indirect leveraged exposure to {asset class x} and/or to the following trading strategies*”.
- ▣ The expected risk-return profile (high level) which is normally expressed in terms of volatility or a volatility range.
- ▣ The investment opportunity. This will normally follow along the lines of “*the investment strategy supporting this is as follows...*”. There was some discussion as to whether and where this should be disclosed. It should be disclosed where it is not obvious to a reader what the investment rationale is. Asset managers will generally express this in terms of some sort of “alpha” and how they think they can extract it from the exposures and strategies previously disclosed above.

(c) Proposed New European System of Financial Supervision

Following political agreement between Member States and EU legislators across Europe, the European Parliament passed a vote on the 22 September 2010 endorsing the EU financial supervision reform package.

The proposed framework will consist of a new European Systemic Risk Board (“ESRB”) and three new European Supervisory Authorities (“ESAs”) for the financial services sector:

A European Banking Authority (“EBA”) based in London, a European Insurance and Occupational Pensions Authority (“EIOPA”) in Frankfurt and a European Securities and Markets Authority (“ESMA”) in Paris. The new authorities will be made up of the 27 national supervisors. This framework is to give Europe the control tower and the radar screens it needs to detect the risks which can accumulate across the financial system as was witnessed in the run up to and at the height of the financial crisis.

The current financial crisis has highlighted weaknesses in the EU's supervisory framework, which remains fragmented along national lines despite the creation of a European single market more than a decade ago and the importance of pan-European institutions. These legislative proposals address those weaknesses both at the macro- and micro-prudential supervision levels by creating:

- ▣ an **ESRB** will have the power to issue recommendations and warnings to Member States (including the national supervisors) and to the European Supervisory Authorities, which will have to comply or else explain why they have not done so. The heads of the ECB, national central banks, the European Supervisory Authorities, and national supervisors, will participate in the ESRB. The creation of the ESRB is in line with several initiatives at multilateral level or outside the EU, including the creation of a Financial Stability Board by the G20.

- ▣ A **European System of Financial Supervisors (“ESFS”)** for the supervision of individual financial institutions ("micro-prudential supervision"), consisting of a network of national financial supervisors working in tandem with new ESAs, created by the transformation of existing Committees for the banking securities and insurance and occupational pensions sectors.

Regarding micro-prudential supervision, currently there are three financial services committees for micro-financial supervision (supervision of individual financial institutions) at EU level, with advisory powers only: the Committee of European Banking Supervisors (“CEBS”), Committee of European Insurance and Occupational Pensions Committee (“CEIOPS”) and the Committee of European Securities Regulators (“CESR”).

An ESRB will be established which will monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole ("macro-prudential supervision"). To this end, the ESRB will provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks. The creation of the ESRB will address one of the fundamental weaknesses highlighted by the crisis, which is the vulnerability of the financial system to interconnected, complex, sectoral and cross sectoral systemic risks.

The three new ESAs will work in a network and in tandem with the existing national supervisory authorities to safeguard financial soundness at the level of individual financial firms and protect consumers of financial services ("micro-prudential supervision"). The new European network will combine nationally based supervision of firms with strong coordination at European level so as to foster harmonised rules as well as coherent supervisory practice and enforcement.

The European Authorities will have the power to:

- ▣ draw up specific rules for national authorities and financial institutions;

- ▣ develop technical standards, guidelines and recommendations;
- ▣ monitor how rules are being enforced by national supervisory authorities (NSAs);
- ▣ take action in emergencies, including the banning of certain products;
- ▣ mediate and settle disputes between national supervisors;
- ▣ ensure the consistent application of EU law; and
- ▣ where necessary, the new Authorities will have the possibility of settling disagreements between national authorities, in particular in areas that require cooperation, coordination or joint decision-making by supervisory authorities from more than one Member State.

Mechanisms, such as Joint Committees, will be introduced to ensure agreement and co-ordination between national supervisors of the same cross-border institution or in colleges of supervisors. For example, the European Banking Authority (“EBA”) and the new European Insurance and Occupational Pensions Authority (“EIOPA”) and the European Securities and Markets Authority (“ESMA”) are to form a Joint Committee (see figure 2) to oversee cooperation and coordination between national supervisors in the case of financial conglomerates.

Finally, the ESMA will be entrusted with direct supervisory powers over credit rating agencies registered in the EU and have the power to request information, to launch investigations, and to perform on-site inspections. Further powers may be transferred to the new European Supervisory Authorities in the future, in particular in the area of financial infrastructures, but only if Member States and the European Parliament agree to do so.

The set-up date for the new ESAs is 1 January, 2011.

For further information on the regulatory reform, please contact the author or your usual contact in Dillon Eustace.

(d) Consultation on CESR’s template for KII

On 20 July 2010, the Committee of European Securities Regulators (“CESR”) launched four consultations on the Key Investor Information document (“KII”) with regard to the following issues: the template document, language and layout, guidelines on the transition from the simplified prospectus to the KII and the selection and presentation of performance scenarios for structured UCITS.

The closing date for submissions was 10 September 2010.

(e) CCSR's Definition of European Money Market

CCSR has published its guidelines on a common definition of European money market funds. The guidelines aim to improve investor protection by setting out criteria to be applied by any fund that wishes to market itself as a money market fund. The criteria reflect the fact that investors in money market funds expect the capital value of their investment to be maintained while retaining the ability to withdraw their capital on a daily basis. A common definition will also help provide a more detailed understanding of the distinction between funds which operate in a very restricted fashion and those which follow a more 'enhanced' approach.

CCSR's guidelines set out two categories of money market fund: Short-Term Money Market Funds and Money Market Funds. This approach recognises the distinction between short-term money market funds, which operate a very short weighted average maturity and weighted average life; and money market funds which operate with a longer weighted average maturity and weighted average life. For both categories of fund, CCSR expects that there should be specific disclosure to explain clearly the implications of investing in the type of money market fund involved. For Money Market Funds, for example, this means taking account of the longer weighted average maturity and weighted average life of such funds. For both types of money market fund, this should reflect any investment in new asset classes, financial instruments or investment strategies with unusual risk and reward profiles.

The guidelines will enter into force in line with the transposition deadline for the revised UCITS Directive (1 July, 2011). However, money market funds that existed before that date will be granted an additional six months to comply with the guidelines as a whole.

(f) CCSR Guidelines for UCITS

In our last quarterly update, we discussed CCSR's guidelines ([CCSR/10-788](#)) on risk measurement and the calculation of global exposure and counterparty risk for UCITS, together with a feedback statement ([CCSR/10-798](#)).

Following the publication of these guidelines, the Financial Regulator has expressed its intention to consider amendments to its rules regarding the use of repo (notably UCITS Notice 12) to reflect the guidelines which clarify that any net exposure to repo/stocklending counterparty must be taken into account in the 20% aggregate issues concentration limit.

In its response to the CESR's guidelines¹, the IFIA commented that consideration needs to be given to the cost of compliance with these requirements, which may be significant, and that the CESR should consider introducing the concept of "nature, scale and complexity" similar to the UCITS Directive itself.

(g) EC's Proposal for Regulating Short Selling

Following CESR's consultation paper on short selling in June, 2010 the EC has now published its draft proposal for regulating short selling and certain aspects of credit default swaps.

AIMA have set out the key points to note from the EC's proposal and they include:

- scope – the Proposal covers:
 - financial instruments admitted to trading on an EU regulated market or MTF (even when such instruments are traded outside that trading venue);
 - derivatives which relate to such a financial instrument or an issuer of such a financial instrument (even when such derivatives are traded outside a trading venue);
 - debt instruments issued by a Member State or the European Union and derivatives relating to such debt instruments or an obligation of a Member State or the Union;

- a disclosure regime is proposed in respect of significant net short positions whereby:
 - **for shares** - private disclosure to the regulator at 0.2% and further increments of 0.1% of issued share capital; public disclosure at 0.5% with 0.1% increments;
 - **for sovereign debt and CDS** – private disclosure only, thresholds to be determined;

- short sell orders are to be marked as such and weekly or more regular summaries of the volume of short selling are to be made available;
- buy-in procedures for settlement failures at T+4 are to be required and fines would apply to those who fail to deliver on the due date;

- an exemption would be available to market makers when acting in this capacity;

¹ Irish Funds Industry Association's response to CESR's Consultation Paper "Risk Measurement for the purposes of the calculation of UCITS' global exposure"

- ▣ restrictions will be imposed in respect of uncovered short sales, requiring the seller to have already borrowed or entered into an agreement to borrow the shares or debt instrument, or to have arranged with a third party that the share or debt instrument has been located and reserved for lending – the details of these provisions remain to be worked out;
- ▣ emergency powers are to be given to competent authorities in respect of imposing bans, restrictions or temporary suspension of short sales, with similar powers (along with a facilitation and coordination role) being provided to ESMA.

It is expected that a new Regulation will be implemented across Europe and this will apply from 1 July, 2012.

(h) Cluster Munitions

An international convention prohibiting the use, production, transfer and stockpiling of cluster bombs, negotiated in Dublin in 2008, entered into force on 1 August 2010.

Ireland played a key role in drafting the International Convention on Cluster Munitions and was one of the first signatories to implement national legislation effecting the terms of the convention. Ireland, Belgium and Luxembourg have prohibited investment in cluster bombs through national law, setting a strong precedent that other countries are expected to follow.

Of note is that a leading global fund manager has put in place a new exclusion policy on investments for Swiss and Luxembourg based clients in about 50 companies linked to the production of anti-personnel mines and cluster munitions. The fund manager said it was respecting a ban of production under the UN Convention on Cluster Munitions and the UN Convention on Anti-Personnel Mines.

(i) CRD II, III & IV

EC Directive 2009/111/EC (“CRD II”) will amend Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management. Member States have until 31 October, 2010 to bring into force laws, regulations and administrative provisions necessary to comply with CRD II.

The amendments relate to large exposures, hybrid capital instruments, supervisory arrangements and securitisation. Principally aimed at reinforcing the stability of the financial system, the amendments should be of interest to a wide range of market participants.

In addition to the changes contemplated by CRD II, a number of further amendments to the CRD have been proposed by the European Commission. Following on in part from the changes to Basel II approved by the Basel Committee on Banking Supervision in July 2009, the additional proposals, which are commonly referred to as "CRD III", relate to increased capital requirements for trading book positions and "re-securitisation" exposures as well as further disclosure requirements in respect of securitisation positions.

In addition, the proposals suggest linking capital requirements to remuneration policies. The Commission is also separately consulting on the "CRD IV" proposals, which contemplate through the cycle expected loss provisioning, specific incremental capital requirements for certain residential mortgages and the removal of certain national options and discretions in the CRD.

The FSA in the UK has issued a number of consultation papers on the proposed amendments and we will provide further update on what the Irish Financial Regulator has proposed in our next quarterly update.

In the interim should you wish to discuss the proposed amendments, please contact Donnacha O'Connor or your usual contact in Dillon Eustace.

(j) Financial Regulator Policy Update 3/2010

In August, the Financial Regulator published policy update 3/2010 - *Collective investment schemes: Charging of fees and expenses to capital in fixed income funds; Names of sub-funds within umbrella funds.*

The policy update states that with effect from 1 September, 2010:

- ▣ all collective investment schemes are now permitted, subject to certain requirements, to charge fees and expenses to capital; and
- ▣ for umbrella sub-funds, the sole name of an investment manager is permitted in the title of the sub-fund, subject to certain conditions.

For further information on the policy update, please contact your usual contact in Dillon Eustace.

(k) Introduction of New QIF Criteria & Competitive Issues

The IFIA recently met with the Financial Regulator to discuss the introduction of new QIF criteria and competitive issues. Below is a summary of items the Financial Regulator has agreed to amend / consider amending through revised draft notices / guidance notes.

Regulated markets:

It was proposed that the Financial Regulator should remove the requirement that the articles of association of an investment company list the regulated markets on which the transferable securities and money market instruments acquired by the investment company must be listed or traded and allow this information to be included in the prospectus instead.

Qualifying investor criteria:

It was requested that the Financial Regulator revise the criteria for QIF investors to take into account MiFID “professional clients”, the proposals under the AIFMD and the investor requirements for the equivalent structure in Luxembourg.





The Financial Regulator has agreed to reduce the minimum subscription to €100,000 and have agreed to change the qualifying investor criteria to include professional investors.

Frequency of calculation of net asset value:

It was proposed that the Financial Regulator review its requirement for the NAV to be calculated on a twice yearly basis (it is acknowledged that a NAV would still have to be calculated in respect of any day on which securities are to be issued or redeemed by the QIF).

The Financial Regulator agreed to a minimum of one valuation per year for QIFs subject to dealing frequency.

It is expected that the following guidance notes will be updated to reflect the recent discussions between the Financial Regulator and the IFIA:

-  Guidance Note 1/96 Permitted Markets for Retail Collective Investment Schemes;
-  Guidance Note 2/96 Promoters of collective investment schemes;
-  Guidance Note 1/00 Valuation of the Assets of Collective Investment Schemes;
-  Guidance Note 1/07 Authorisation of Qualifying Investor Schemes – Application process; and

- ▣ Notice NU 24 Schemes which market solely to Qualifying Investors.

Please contact Andrew Bates or Brian Kelliher of Dillon Eustace should you wish to discuss the proposed revisions in more detail.

(I) Voluntary Corporate Governance Code and Leverage Disclosure Requirements for UCITS

The Financial Regulator wrote to industry in mid-September setting out a change in policy in respect of leverage disclosure requirements for UCITS and a new procedure for director applications where that director holds more than 30 directorships.

New director applicants that hold more than 30 directorships (worldwide – regulated and unregulated) must bring to the relevant board's attention that:

- ▣ the Financial Regulator is concerned at the number of directorships they hold;
- ▣ the Financial Regulator has requested the fund industry to develop a voluntary corporate governance code for financial services firms in the funds industry in Ireland;
- ▣ the new code will include recommendations regarding the optimal number of directorships for individuals; and
- ▣ when this code is adopted, it is possible that individual boards may need to be restructured to take account of recommendations.

Following the issue of new CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS on 28 July, 2010, the Financial Regulator has issued a letter of advice to the IFIA on requirements in relation to the leverage disclosure which is required by a UCITS employing either the commitment approach or VaR measures. For UCITS using VaR measures information is provided regarding the disclosure of expected leverage and the possibility of higher leverage, and for UCITS using FDIs under the Commitment Approach further information and guidance regarding the required disclosures is also provided.

The Financial Regulator provided the following two examples to clarify the approach adopted when reviewing fund documentation:

- (A) A UCITS may leverage up to 100% of NAV under the commitment approach. If the UCITS' use of FDIs is consistent with the maximum limit being availed of by the UCITS, no comments will be raised by the Derivatives Unit. However, the following leverage disclosure is not acceptable:

“The Fund may be leveraged as a result of its use of financial derivative instruments”.

- (B) If the UCITS is using FDIs solely for hedging purposes we expect that any leverage will be minimal, therefore it is not coherent to then insert the maximum leverage limit which a UCITS using the commitment approach may avail of.

In the same letter, the Financial Regulator also provides advice on the authorisation process for UCITS which includes a review of the coherence between a UCITS investment policy and the Risk Management Process (RMP) regarding the use of FDIs by ‘non-complex’ UCITS.

The Financial Regulator will be updating the relevant UCITS Notices and Guidance Notes as part of the UCITS IV implementation.

(m) Standardisation and Exchange Trading of OTC Derivatives / Transaction Reporting

In a consultation paper issued in July, CESR explored the need for taking regulatory actions in relation to further standardisation for credit, equity, interest rate, commodity and foreign exchange derivatives to ensure efficient and safe derivatives markets in response to the financial market turmoil.

Following this consultation, the European Commission tabled a proposal on 15 September, with a view of bringing greater transparency, safety and efficiency to the OTC derivatives market.

The proposed directive on regulating the OTC, central counterparty and trade repository markets requires that information on OTC derivative contracts should be reported to trade repositories and be accessible to supervisory authorities, with additional information also being made available to market participants to increase transparency in the markets. It is proposed that the new ESMA will be responsible for the surveillance of trade repositories and for granting their registration. These trade repositories will have to publish aggregate positions by class of derivatives to give all market participants a clearer view of the OTC derivatives market.

The Commission also proposes that standard OTC derivative contracts be cleared through central counterparties (“CCPs”), to reduce counterparty credit risk, i.e. the risk that one party to the contract defaults. CCPs may interpose themselves between two counterparties to a transaction and thus become the ‘buyer to every seller’, as well as the ‘seller to every buyer’.

This will prevent the situation where a collapse of one market participant causes the collapse of other market participants, thereby putting the entire financial system at risk.

(n) Corporate Governance Code for Irish Domiciled CIS

In late September, the IFIA published the voluntary Corporate Governance Code for Irish Domiciled Collective Investment Schemes (the “Code”).

The Code may be adopted by Irish domiciled collective investment schemes on a voluntary basis but the Code does reflect existing practices imposed under the Companies Acts 1963 to 2009 and the Financial Regulator’s UCITS & Non-UCITS Notices along with Guidance Notes.







Adoption of the Code should enable Irish domiciled collective investment schemes with shares admitted to trading on a regulated market to refer to this Code in a specific section in the Directors’ Report of that collective investment scheme’s Annual Report and in doing so comply with the provisions of the S.I. No. 450 of 2009.

The Code covers general requirements applicable to a board of directors including its composition, meetings, its role and committees. It further deals with the audit, compliance and risk management function.

Please contact your usual contact in Dillon Eustace for further details on the Code or if you would like a copy thereof.

Re-domiciling an Investment Fund to Ireland

In late December, 2009 the Irish government introduced new legislation (Companies (Miscellaneous Provisions) Act, 2009 to allow for a more efficient system for re-domiciling non-Irish domiciled corporate funds into Ireland from the following jurisdictions:

-  the British Virgin Islands;
-  the Cayman Islands;
-  Jersey;
-  Guernsey;
-  Bermuda; and
-  The Isle of Man.

The UCITS structure is regarded as the European gold standard fund structure and once authorised in Ireland can be sold without further authorisation into the other 26 EU Member States. It is also sold in Asia (mostly Hong Kong, Japan, Korea), in Latin and South America and the Middle East. UCITS can house a variety of strategies provided liquidity, diversification and certain additional criteria are met.

The new system enables corporate funds established and registered in certain jurisdictions to apply to the Companies Registration Office in Ireland (“CRO”) to continue as a company under the laws of Ireland and to apply to the Financial Regulator to be authorised as a fund in Ireland. This re-domiciliation regime enables re-domiciled funds to be authorised in Ireland as either a UCITS or non-UCITS fund provided that they meet the relevant criteria for the chosen fund structure.

It is expected that re-domiciliation will be used by promoters wishing to utilise the UCITS product or the Irish QIF product (the vehicle most used for hedge funds, FoHF and less liquid/highly leveraged products) with the new re-domiciliation opportunity making the process more straight forward and, most importantly, avoiding the necessity of having to liquidate a portfolio or engage in asset for share swap arrangements.

Should you require any additional information on the redomiciliation process, please see the Dillon Eustace publication entitled “Re-Domiciling an Investment Fund to Ireland” published on www.dilloneustace.ie or refer to your usual contact in Dillon Eustace.

UCITS IV

The European Council voted on 22 June, 2009 for the adoption of the UCITS IV Directive (the “Directive”), as already adopted by the European Parliament in plenary session on 13 January, 2009. The Directive has now been finally adopted in accordance with the co-decision procedure, thus marking the end of the first step for the implementation of a European text.

The UCITS IV proposal containing amendments to the UCITS Directive 85/611/EC was first proposed by the EC on 16 July, 2008. This proposal did not take into account the management company passport which, after having been debated at CESR level, was reintroduced in December 2008.

According to the Lamfalussy process, there remains three levels before the transposition of the Directive shall be considered as fully completed among Member States. Similar to

MiFID, the Directive provides that the details of certain provisions should be covered by Level 2 implementing measures to be adopted by the EC with a view to harmonising the implementation of the text. On 13 February, 2009 the EC submitted to CESR a provisional request for technical advices on the new UCITS Directive implementing measures. On 12 April, 2010, the European Securities Committee voted in favour of all the proposed level 2 measures.

The final two steps of the Lamfalussy process will take place during and after the period of transposition of the Directive. Under level 3, CESR will be in charge of issuing interpretation recommendations to national authorities and under level 4 the EC will control and advise Member States as to a proper interpretation and application of the Directive. Member States will have until 1 July, 2011 to implement the text into national legislation.

The consultation paper that CESR published on 8 July, 2009 provides technical advice on the level 2 measures related to the UCITS management company passport. CESR's draft advice covers the organisational requirements that companies managing UCITS need to fulfil, and conflicts of interest those companies must avoid. The advice also includes details on the companies' rules of conduct, depositaries and risk management, as well as on supervisory cooperation. The majority of the suggestions made in the CESR Advices were carried through into the Commission Directive 2010/43/EU of 1 July 2010 implementing the UCITS IV Directive as regards organizational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

The Directive was published in the Official Journal of the European Union on 17 November, 2009 and entered into force on the twentieth day following this publication. Here is a link to the text for your convenience:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:FULL:EN:PDF>).

The following is a summary of the key implications of the Directive:

Management Company Passport

The concept of a management company passport ("MCP") was first introduced in Directive 2001/107/EC (the "Man Co Directive"). The Man Co Directive introduced an authorisation framework for Man Cos which is similar to that applied to investment firms under MiFID imposing requirements relating to minimum capital, internal management control mechanisms, probity and experience of the directors and management and conduct of business rules.

These measures were intended to harmonise the authorisation process of Man Cos in all EU Member States which in theory would enable the MCP provided for in the Man Co Directive (as explained below) to operate effectively whereby a Man Co established in one Member State could be appointed as Man Co of UCITS schemes domiciled in other Member States.

However, despite the new authorisation process and the provision of a MCP contained in the Man Co Directive, the MCP has not worked under the existing legal framework. This failure was attributed to the fact that the definition of “UCITS Home Member State” in the Man Co Directive meant that it was not possible for a Man Co to passport its services in the context of UCITS funds established as unit trusts.

The Directive enables European funds created under the UCITS regime to be managed by a management company authorised and supervised in a Member State other than the home Member State of the Fund.

Fund Mergers

The Directive establishes a unified regime for both cross-border and domestic mergers of Funds. Pursuant to the Directive, all Funds are entitled to merge regardless of their structure (corporate, unit trust, or contractual type of funds).

Master Feeder Structure

The Directive sets out the first European regulation concerning the setting-up of master feeder funds. A feeder fund is defined in the Directive as a UCITS or a sub-fund thereof which has been approved to invest at least 85% of its assets in units of another fund. It can also set aside 15% of its assets to invest in derivative instruments or liquid assets etc. As far as the master fund is concerned, it cannot itself be a feeder fund, nor hold units of a feeder fund.

Key Investor Information

The key investor information (“KII”) shall replace the simplified prospectus which failed to provide investors with all basic information to enable them to make an informed investment choice. It is intended to be as short pre-contractual document written in a brief manner and in a non-technical language which shall provide easily understandable, fair, clear and not misleading information on the fund to contemplated or actual investors.

The European Commission has now published a Regulation 583/2010 implementing the UCITS IV Directive as regards the key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of the website (the “Commission Regulation”). We have set out some of the key provisions/principles of the Commission Regulation in our brochure – UCITS IV – Key Investor Information Document.

On 1 July, CESR issued level 3 Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the KII document. Such an indicator should be based on the volatility of the fund using weekly or monthly returns concerning the previous five years.

Simplified Notification Procedure

A fund wishing to market its units in a Member State different than its country of incorporation will notify its supervisory authority of such project, through a notification procedure which will then be transferred by its home regulator to the competent supervisory authorities of the contemplated host country (new “regulator-to-regulator” procedure).

Enhanced Cooperation between Supervisory Authorities

The proposed amendments to the Directive will result in increased cross-border operations necessitating a full and timely cooperation between supervisory authorities. The Directive encourages the exchange of information, harmonises the powers of the supervisory authorities and allows for the possibility of immediate verifications and investigations, consultation and mutual help mechanisms.

The enhance cooperation between supervisory authorities is expect to result in a more simplified Regulator-to-Regulator notification. This will permit a UCITS to begin marketing its units in another Member State (the “Host Member State”) no later than 10 working days after the date of receipt of the required standard notification letter accompanied by complete documentation required in the application. It also greatly simplifies the documentation required, and significantly the only document which requires translation in the language of the Host Member State is the KII.

The notification procedures in the UCITS IV Directive have been broadly welcomed by the European funds industry as it is believed that they will improve administrative efficiency and facilitate more efficient marketing and reduce translation costs.

For detailed information on UCITS IV, please refer to Brian Higgins of Dillon Eustace and the following publications which can be read on our website:-

- ▣ UCITS IV – Management Company
- ▣ UCITS IV – Key Investor Information Document
- ▣ UCITS IV – Cross-Border Notifications

▣ Data Protection

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 –

- ▣ 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.

MiFID 2

In April, 2010 CESR published three consultation papers which were seen by industry as a steps towards reviewing and amending certain aspects of MiFID. The consultation papers included proposed technical advice by CESR on investor protection and intermediaries (CESR/10-417), equity markets (CESR/10-394) and transaction reporting (CESR/10-292).

The consultation papers addressed areas of the MiFID legal framework needing improvement, including quality, cost and consolidation of post-trade transparency data and delays in the publication of such data.

CESR published its recommendations to the European Commission in late July, which related to key issues both CESR and market participants had identified. The recommendations take into account market developments since MiFID was originally drafted and full details of which can be read at <http://www.cesr.eu/popup2.php?id=7009>.

A senior regulator with the FSA in the UK has been chosen to chair a committee of 16 experts from European stock markets, execution venues and investment banks to work with CESR by assisting it advise the European Commission who will then go and draft MiFID 2.

It is expected that MiFID 2 will take effect in 2012 and is aimed at tightening the rules that govern stock exchanges, electronic trading systems, investment banks and high frequency trading hedge funds.

Please contact the author should you need further information on MiFID 2.

□ European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations, 2010

In late May, 2010 Directive 2006/43/EC (the “8th Company Law Directive”) was transposed into Irish Law by Statutory Instrument Number 220 of 2010 entitled the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations, 2010 (the “Regulations”).

These Regulations give effect to the 8th Company Law Directive on statutory audits of annual accounts and consolidated accounts, amending Council Directive 78/660/EEC on the annual accounts of certain types of companies and Council Directive 83/349/EEC on consolidated accounts and repeals Council Directive 84/253/EEC on the approval of persons responsible for carrying out the statutory audits of accounting documents.

Regulation 91 of the Regulations states that “public-interest entities” shall, within 6 months of the Regulations being made (i.e. by **20 November, 2010**), establish an audit committee in respect of it.

Public-interest entities are defined as in the Regulations as:

- companies or other corporate bodies governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State;
- credit institutions; or
- insurance undertakings.

Exemptions to the Regulations are set out in Regulation 91 thereof. For example, a subsidiary undertaking can be exempt from the Regulations where the parent undertaking has established an Audit Committee in accordance with the Regulations. To avail of an exemption, it may be necessary to insert appropriate wording in the annual report.

Please contact the author or your usual contact in Dillon Eustace should you require further information on the Regulations.

□ 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.

Central Bank Reform Act, 2010

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.

The following provisions of the Act are not being commenced at this stage:

- ▣ the application of the fitness and probity regime to Credit Unions will not commence until a separate order is made by the Minister. This will await the report on the Strategic Review of the Credit Union Sector in Ireland which is currently underway; and
- ▣ the commencement of a small number of provisions has been deferred until early, 2011: the transfer of consumer information and education functions to the National Consumer Agency; and provisions relating to the preparation of the Central Bank's Strategic Plan.

▣ **Dodd Frank Wall Street Reform and Consumer Protection Act**

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/recordkeeping 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.

Our client brochure highlights the potential impact of certain provisions of the Act on non U.S. investment advisers to private funds, in particular the requirement that non U.S. investment advisers who manage assets greater than \$25 million attributable to U.S. clients may need to register with the SEC by 21 July, 2011.

□ The Financial Regulator

(i) Annual Report and Strategic Plan

On the 16 July 2010, the Central Bank published its 2009 Annual Report and Strategic Plan for 2010 to 2012.

To reflect the new Central Bank Reform Act, which will formally create a new single unitary organisation, the 2009 Annual Report incorporates the annual reports of both the Central Bank and Financial Regulator in one publication. The report outlines how the Central Bank proposes to deal with three key policy issues to address the failures in the banking system namely:

- stabilisation and normalisation of the banking sector;
- consolidation of the public finances; and
- restoration of the economy's competitiveness position.

The major new measures and initiatives featured in the Strategic Plan include:

- ▣ A refocused approach to strengthening the financial system including a new approach to financial stability assessment;
- ▣ The development of a new regulatory model with an enhanced supervisory capacity for the detection and correction of problems with an active and challenging approach;
- ▣ Interacting with new EU supervisory bodies, such as the European Systemic Risk Board and the European System of Financial Supervisors;
- ▣ Building on consumer protection including a review of the Consumer Protection Code;
- ▣ Greater attention in our economic research on the functioning of the financial system and fuller collaboration with the universities, ESRI and the wider public service; and
- ▣ Moving towards a 100% charge back arrangement on the costs to industry to reduce the cost to the taxpayer.

(ii) **Consultation Paper 45 – amendments to the Minimum Competency Requirements (“CP45”)**

During the last quarter, the Financial Regulator published CP45 regarding the Minimum Competency Requirements and sought industry views on the proposals by the 13 August, 2010. The Financial Regulator is expected to publish their findings in the final quarter of this year. In summary, CP45 proposes the following:

- ▣ changing the 3 year CPD cycle to an annual 15 formal hour requirement;
- ▣ phasing out ‘grandfathering arrangements’ over a 4 year period whereby a recognised qualification must be achieved by 2015;
- ▣ amendment to making public the register of accredited individuals on request; and
- ▣ detailed requirements are proposed regarding records to be maintained to demonstrate compliance with the Requirements.

The Financial Regulator is aiming at introducing the new requirements in the second quarter of 2011.

(iii) **Extension of the short term guarantee**

The Minister for Finance, Mr Brian Lenihan, TD announced on the 7 September 2010 that the Government guarantee for short term bank liabilities, including corporate and interbank deposits as well as debt securities will be extended from its current expiry date of 29 September to 31 December 2010. The amending regulation to give effect to this extension was approved by both Houses of the Oireachtas on the 29 September 2010.

The Minister reiterated that this announcement does not affect retail deposits of up to €100,000 as these deposits continue to be guaranteed under the ordinary Deposit Guarantee Scheme and that Scheme is not time limited.

TAX

Equivalent Measures

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.

The Revenue Commissioners have now provided details of how to apply for the waiver and the relevant “equivalent measures” which are attached for your attention.

New & Existing Funds – Customary Measures

Under the “equivalent measures” a fund seeking the non-resident declaration waiver, while acknowledging that a fund may not prohibit Irish residents from subscribing, would undertake not to actively promote units/shares for sale in Ireland. If the fund were to receive an application from an investor who provides an Irish address or bank account for any purpose, the fund would be required to treat that investor as Irish resident for tax purposes unless the investor provides a signed non-resident declaration. Each fund applying the waiver must also include wording in the terms and conditions of its application form outlining the obligation of each investor to notify the fund if they become Irish resident. The fund would also agree to comply with all its obligations in accordance with the provisions and practices of Irish tax law, including its obligations in respect of identifying Irish resident investors.

The specific conditions are set-out in Appendix I(c), in the Investment Undertakings Guidelines (i.e. regulated fund guidelines) updated recently by the Revenue Commissioners.

Existing Funds – Additional Measures

With regard to existing funds, Revenue has confirmed the following additional measures:-

- i) In conjunction with making the standard equivalent measures undertakings (as per A) above) in a letter of application, the fund also undertakes to provide Revenue, immediately following the changeover date, with a report of the status of the fund setting out:
 - a) the NAV of the Fund at the chosen cut-off date
 - b) the numbers of shares/units subscribed for at that date;
 - c) breaking a) and b) down into the various categories (i.e. those covered by NRDs, taxable Irish residents, etc); and
- ii) On receipt of approval from Revenue the fund will select the changeover date and the fund will advise this date to Revenue when providing the report provided for at i) above.

The fund will therefore be free to choose a changeover date that suits it once initial approval has issued.

Application

Any fund wishing to receive such approval should apply in writing to the Office of the Revenue Commissioners, Financial Services (Insurance & Investment Funds Unit), Setanta Centre, Nassau Street, Dublin 2, confirming compliance with the conditions set out in the Appendix I(c). For the avoidance of doubt, there is **no** requirement to submit the funds application (subscription) form in the initial application (although obviously the Revenue Commissioners can request if they so wish).

Funds Re-domiciling to Ireland

Earlier in this edition we made reference to the new redomiciliation regime. The reason a fund may wish to redomicile to Ireland from a tax perspective is because of Ireland's favourable tax regime for investment funds which includes (i) exemption from tax on the

fund's income and/or gains (ii) no withholding taxes on distributions to non-Irish resident investors and (iii) a wide (and expanding) network of double taxation treaties. Combined with an attractive SPV tax regime, alternative investment funds are increasingly using Ireland as a domicile because of the ability to access Ireland's double tax treaties and take advantage of EU tax directives to avoid and/or minimize foreign taxes.

The new system of redomiciling provides a number of benefits, for example, the track record of the existing fund can be maintained, no portfolio realisation will need to occur and no asset for share swap or amalgamation will be required under the new system. Consequently one of the possible major benefits of this new system is that investors (depending on the tax laws in their own jurisdiction) may be able to avoid a tax charge on the fund redomiciling as investors will not have disposed of their shares/units in the fund upon it redomiciling to Ireland.

As an aside in line with recent tax amendments permitting investment funds not to use non-resident declarations (NRDs) to identify Irish resident investors and instead adopt appropriate equivalent measures (see above), Revenue has confirmed that funds re-domiciling to Ireland may apply for Revenue approval to adopt Equivalent Measures (rather than operate NRDs). In respect of existing investors in the investment fund at the time of re-domiciling to Ireland, the investment undertaking may make a simple declaration within 30 days from the date investment fund re-domiciles to Ireland stating that to the best of its knowledge and belief that at the time of the re-domicile it has no Irish resident investors (other than such investors whose name and addresses are set out on the schedule to the declaration). Alternatively investment funds may be able to obtain NRDs from existing investors at the time of the redomicile.

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