

Funds
Quarterly Legal
and Regulatory
Update

Period covered:
1 January, 2011 to 31 March, 2011

DILLON  EUSTACE

DUBLIN BOSTON NEW YORK TOKYO



Contents

Funds Quarterly Legal and Regulatory Update

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

Page 2

UCITS, Non-UCITS & Hedge Funds

Page 2

AIC guidance for Investment Company Boards on Managing Custody Risk

Page 11

IOSCO Final Report on Point of Sale Disclosure Principles for Funds

Page 11

ISE Adopts New Rules on Corporate Governance

Page 12

AIMA Response to Short-Selling Regulation

Page 13

The Central Bank of Ireland

Page 13

Other Developments

Page 19

Contact Us

Page 22

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 2010”) and has been effective as of 15 July, 2010.

The period of consultation in respect of the final draft of the industry Money Laundering Guidance Notes has now closed. Once the core guidance notes have been published, it is expected that the process of finalising the sectoral guidance notes will commence.

On the 25 March, 2011 Council Regulation (EU) No 296/2011 amending Regulation EU No 204/2011 came into effect. This concerns restrictive measures to be applied in view of the situation in Libya. Designated persons are required to have appropriate procedures in place to meet with the requirements of this Regulation.

If you would like further information on anti-money laundering requirements or any changes arising out of the CJA 2010, 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

EC’s Draft Directive on Alternative Investment Fund Managers

The consultation period for the European Securities and Markets Authority’s (“ESMA”) call for evidence on the Alternative Investment Fund Managers Directive Level 2 implementing measures ended in January. ESMA is to provide further details in due course in relation to any public consultation it will carry out in light of responses to the call for evidence.

The European Commission wrote to ESMA on the 21 February, extending the deadline for ESMA’s Level 2 technical advice for a further month (to 16 November, 2011).

For detailed information on the Directive including how it may impact your business, please refer to your usual contact in the Asset Management and Investment Funds Unit of Dillon Eustace.

ISE Approves Additional Requirements for Listing Actively Managed ETFs

Further to an application by Dillon Eustace to list the first actively managed ETF on the Irish Stock Exchange (the "ISE"), the ISE has issued a policy note addressing a number of rule changes facilitating such listings going forward. A review of these changes is available on our website:

<http://www.dilloneustace.ie/download/1/Active%20ETF%20ISE%20Policy%20-%20Article%20short%20FD%20Feb2011.pdf>

European Systemic Risk Board Holds First Meeting

The European Systemic Risk Board ("ESRB") held its first meeting on 20 January, 2011.

The ESRB is aimed at contributing to the prevention or reduction of systemic risks to financial stability in the EU that arise from developments within the financial system.

The European Central Bank has commented that the ESRB will also contribute to the smooth functioning of the internal market and is aimed to ensure a sustainable contribution of the financial sector to economic growth.

However, the European Commission has stated that the ESRB will not have any binding power to impose measures on Member States or national authorities. It has been conceived as a "reputational" body with a high level composition that should influence the actions of policy makers and supervisors by means of its moral authority.

The seat of the ESRB will be in Frankfurt, Germany. The Chair of the ESRB is the President of the European Central Bank, Jean-Claude Trichet, while Mervyn King, Governor of the Bank of England, was elected as first Vice-Chair of the ESRB by the members of the General Council of the European Central Bank.

ESMA's Definition of European Money Market Funds

ESMA has published its guidelines on a common definition of "European money market funds" (the "Guidelines").

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.

The 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, ESMA 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 ESMA has provided that money market funds existing prior to 1 July 2011 will have until 31 December 2011 to comply with certain provisions of the Guidelines.

Please contact your usual contact at Dillon Eustace for further information.

Re-domiciliation of Collective Investment Schemes to Ireland

The Companies (Miscellaneous Provisions) Act 2009 amended the Companies Act 1990 and the European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003, to provide an efficient legislative mechanism for corporate investment funds to re-domicile into Ireland. The Companies Act 1990 (Relevant Jurisdictions under Section 256F) Regulations 2010, identified the following as relevant jurisdictions from which corporate CIS could re-domicile into Ireland: Bermuda, BVI, Cayman Islands, Guernsey, Isle of Man and Jersey.

Since the introduction of this legislation a number of funds have re-domiciled and more are in the process of re-domiciling. The first such re-domiciliation in respect of a Guernsey investment fund company to Ireland took place in this quarter. While the legislation provided an efficient legal mechanism for funds to re-domicile to Ireland, the Central Bank has now provided further guidance regarding the regulatory process and procedure for re-domiciling funds into Ireland e.g. the documentation that must be submitted to the Central Bank, confirmations required, etc.

In addition, although there are no legislative provisions which specifically address the re-domiciliation of unit trusts to Ireland, the Central Bank has determined that a re-domiciliation process similar to that in place for corporate CIS should apply in respect of unit trusts.

Please contact a member of the Regulatory and Compliance Department in Dillon Eustace should you need further information on the regulatory process and procedure for re-domiciling investment funds into Ireland.

Consultation on Revised UCITS Notices, NU Notices and Guidance Notes

In February 2011, the Central Bank issued a consultation paper on amendments to UCITS Notices, NU Notices and Guidance Notes to reflect the changes necessary under the UCITS IV Directive and other changes. Submissions by interested parties were to be made no later than 15 March 2011.

Corporate Governance Code for Irish Domiciled CIS

In late September, 2010, the IFIA published the voluntary Corporate Governance Code for Irish Domiciled Collective Investment Schemes (the "SI 450 Code").

The SI 450 Code may be adopted by Irish domiciled collective investment schemes on a voluntary basis but the SI 450 Code does reflect existing practices imposed under the Companies Acts 1963 to 2009 and the Central Bank's UCITS & Non-UCITS Notices along with Guidance Notes.

Adoption of the SI 450 Code should enable Irish domiciled collective investment schemes with shares admitted to trading on a regulated market to refer to the SI 450 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 (as amended). Back in January 2010, the IFIA had published template corporate governance statement disclosures which might be included in an investment funds financial statement to ensure compliance

with the provisions of S.I. No. 450 of 2009 (as amended). As the SI 450 Code is now available, the IFIA has revised the template corporate governance statement disclosures.

The SI 450 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 functions.

Separate to the SI 450 Code, the IFIA at the request of the Central Bank is working on a revised corporate governance code for the funds industry. It is expected that the revised code will introduce a number of new standards not currently dealt with by existing corporate governance practices e.g. time commitment expected from each director, number of non-fund directorships, number of independent directors and non-executive directors, etc.

Please refer to your usual contact in Dillon Eustace for further details on the SI 450 Code or if you would like a copy thereof.

Consultation on legislative changes to the UCITS depository function and to UCITS managers' remuneration

The IFIA has filed its response to the European Commission's legislative proposal to review the current framework applicable to UCITS depositories and to introduce new provisions on UCITS' managers' remuneration with a view to improving the level of UCITS investor protection. Of particular note is the response concerning increased depository liability. The European Commission is expected to respond to submissions during the second quarter of 2011.

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 was 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 ESMA level, was introduced in December 2008.

According to the Lamfalussy process, there are 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 ESMA a provisional request for technical advices on the new UCITS Directive implementing measures.

The consultation paper that ESMA published on 8 July, 2009 provided technical advice on the level 2 measures related to the UCITS management company passport. ESMA's draft advice covered the organisational requirements that companies managing UCITS need to fulfil, and *inter alia* conflicts of interest those companies must avoid. The advice also included 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 ESMA 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 final two steps of the Lamfalussy process will take place during and after the period of transposition of the Directive. Under Level 3, ESMA 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 have until 1 July, 2011 to implement the text into national legislation. The Department of Finance has prepared the draft of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, which is expected to be brought into effect around Easter 2011.

The following is a summary of the key implications of the UCITS IV 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 a short pre-contractual document written in a brief manner and in 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”).

On 1 July, ESMA 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 from 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 enhanced cooperation between supervisory authorities is expected 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 into 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.

UCITS IV introduces significant changes for UCITS management companies which will need to be addressed well in advance of the 1 July 2011 start date. In particular, through the UCITS IV Implementing Directive, new MiFID-like organisational and internal control requirements, conflicts of interest requirements and risk management requirements will be

applied to UCITS management companies. In addition, UCITS management companies will need to comply with new rules of conduct. In order to facilitate a smooth transition, the Central Bank requires that each existing UCITS management company submit a revised business plan for review by it on or before 29 April, 2011.

For detailed information on UCITS IV, please refer to your usual contact in the Asset Management and Investment Funds Unit 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

EU Commission publishes feedback on UCITS V consultation

On 17 February, 2011 the EU Commission published a response to the feedback it had received in respect of its consultation on the current framework applicable to UCITS depositaries and the introduction of new provisions on remuneration for UCITS managers. The key policy priority highlighted in the response is the clarification of UCITS depositary duties and liability regimes. In relation to the UCITS managers' remuneration policy, the majority of respondents stressed that remuneration rules should be adjusted to the UCITS model. An impact assessment study will be published later this year alongside the EU Commission's proposal for amendments to the UCITS Directive.

The European Commission has delayed publication of the UCITS V legislative proposal to the latter part of 2011 in order to allow time to include a new section on sanctions in the UCITS Directive. This is part of an initiative, the aim of which is to achieve greater convergence and reinforcement of the national sanctioning regimes in the financial sector. It is anticipated that the Commission will launch a public consultation on UCITS sanctioning regimes soon.

Companies now required to disclose auditors' remuneration

Following the implementation of European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations, 2010, an analysis of auditors' remuneration is now required to be included in the statutory financial statements of Irish companies. Remuneration must be disclosed in respect of each of the following categories of work carried out by an auditor:

- (a) the audit of individual accounts;

- (b) other assurance services;
- (c) tax advisory services;
- (d) other non-audit services.

The requirement applies to financial years ending on or after 20 August, 2010.

AIC guidance for Investment Company Boards on managing custody risk

The Association of Investment Companies has published a guidance paper for investment management company boards on managing custody risk. This guidance paper sets out a list of questions which the board of directors should consider when examining and evaluating the investment company's custodial arrangements. The guidance paper also summarises the provisions of the AIFMD relating to depositary arrangements.

IOSCO final report on Point of Sale Disclosure Principles for Funds

On 2 February, 2011 the International Organisation of Securities Commissions (**IOSCO**) published its consultation report on point of sale ("**POS**") disclosure principles for collective investment schemes ("**Funds**"). The consultation report provides for a set of principles that are designed to assist markets and market authorities when considering point of sale disclosure requirements. The report reflects the significance that regulators attach to transparency in the market place, particularly relating to the disclosure of information to investors, in seeking to ensure that markets run efficiently and with integrity. The importance of transparency and meaningful disclosure has been highlighted in the economic crisis. The report sets out principles that are designed to assist markets and market authorities when considering POS disclosure requirements..

Specifically, the principles articulated by the report for disclosure of key information are:

- (i) Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold. Such product disclosure could include the name of the investment and type of product, the risk and reward profile of the product and its fees and costs.

- (ii) Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.
- (iii) Key information should be delivered or made available that is appropriate for the target investor.
- (iv) Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing collective investment scheme products.
- (v) Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.
- (vi) In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.

IOSCO is encouraging regulators to consider how these principles could be adopted in respect of products which are similar to Funds.

ISE adopts New Rules on Corporate Governance

On the 17 December, 2010 the ISE published the new Listing Rules (“the Rules”) which require Irish listed companies (i.e. listed under the ISE equity rules) to comply or explain against additional corporate governance provisions which arise from the recommendations contained in the report on Compliance with the Combined Code on Corporate Governance by Irish listed companies (“the ISE/IAIM Commissioned Report”). These Rules, contained in a new Irish Corporate Governance Annex, supplement the existing provisions which require Irish listed companies to comply or explain against the requirements of the UK Corporate Governance Code. The Rules are not applicable to listed open ended investment funds.

The new Rules are effective immediately, therefore Irish listed companies with accounting periods commencing on or after the 18 December 2010, will be required to comply or explain against the Irish specific corporate governance provisions.

The requirement to comply with the UK Corporate Code is already in place, having applied to Irish listed companies with accounting periods beginning on or after 30 September 2010.

AIMA response to Short-Selling Regulation

On 15 September, 2010 the European Commission published a draft proposal for a Regulation on Short Selling and certain aspects of Credit Default Swaps. Negotiations continue between the Commission, ECON and the Presidency of the Council in an effort to reach agreement on a final text. While AIMA is largely in favour of the current draft of the Regulation, it has expressed concern that the commercial and market reality of short selling and derivatives trading must be recognised. As such, it has published its concerns regarding the current draft of the Regulation which primarily relate to sovereign credit default swaps, naked short sales, public disclosure of significant short positions, the marking regime, calculation of short positions and mandatory buy-in provisions.

The Central Bank of Ireland

Divisional Name Change

With effect from 21 February, 2011, the Financial Institutions and Funds Authorisation Division has been renamed the “Funds Authorisation Division”. This is to reflect the Central Bank’s decision to amalgamate its authorisation and supervision functions within industry-specific supervisory departments.

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

During the second quarter of 2010, the Central Bank published CP45 regarding the Minimum Competency Requirements and sought industry views on the proposals by the 13 August, 2010. 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 regarding records to be maintained to demonstrate compliance with the Minimum Competency Requirements.

The Central Bank is aiming at introducing the new requirements in the second quarter of 2011.

Consultation paper 47 – Review of Consumer Protection Code (“CP47”)

In late October 2010, the Central Bank issued a consultation paper on amendments to the Consumer Protection Code. The strategic plan for 2008 – 2010 had earlier suggested such a consultation process commencing in 2009.

The closing date for submissions was 10 January, 2011 and full details of CP47 can be found on www.financialregulator.ie.

Dillon Eustace will provide updates on the outcome of this consultation process in due course.

Draft Directive on Deposit Guarantee Scheme

In November 2010, the Head of Payments and Securities Settlements in the Central Bank (Paul Molumby) welcomed the proposals set out in the draft recast Deposit Guarantee Schemes Directive.

The proposal is a comprehensive reform of the EU Deposit Guarantee Schemes and follows on from the EU “emergency measures” taken in 2009, through Directive 2009/14/EC, which principally dealt with increasing the level of coverage to €100,000 for all schemes.

The four key elements of the draft directive are:

1. The simplification and harmonisation of the scope of coverage;
2. Faster payout times;
3. Revisions to funding arrangements; and
4. Enhanced cooperation between deposit guarantee schemes across Europe.

The proposals are beneficial from a depositor’s perspective and give confidence that Deposit Guarantee Schemes can assist in maintaining financial stability. In particular, depositors would receive compensation quicker than was previously the case.

While payout times will be reduced from three months to 20 working days with effect from 1 January, 2011 under Directive 2009/14/EC, the draft directive proposes reducing this to seven calendar days by the end of 2013.

This is currently a draft directive, and certain aspects may be clarified or changed as it progresses through the EU approval process. The Central Bank continue to closely monitor developments.

Consultation Paper 48 - Minimum Activities of Irish-Domiciled Investment Funds ("CP48")

Having regard to the imminent implementation of UCITS IV (and particularly the UCITS Management Company Passport), the Central Bank has issued a consultation paper regarding the minimum activities regime for Irish authorised funds.

The issues raised from an industry perspective were:

- ▣ The proposal of a definition for maintenance of the shareholder register within the State;
- ▣ A request for grandfathering/transitional arrangements for current derogations;
- ▣ Separate outsourcing requirements where that outsourcing is being carried out intra-group as opposed to outsourcing to a third-party;
- ▣ Recognition that for administration services provided to non-Irish funds it may not be possible to require the core administration activities as outlined in CP48, if the administration company is not contracted to provide all core administration functions; and
- ▣ To highlight that the BCP requirements in CP48 go further than the CEBS BCP requirements and should therefore be made more flexible and proportionate.

Responses were due by 31 December, 2010.

Dillon Eustace will provide updates on the outcome of this consultation process in due course.

Enforcement Strategy and Risk Based Supervision

The Central Bank which is now responsible for both central banking and financial regulation in Ireland has established an Enforcement Directorate – the main objective of which is

“the proper and effective regulation of financial service providers and markets, while ensuring that the best interests of consumers of financial services are protected”.

The Enforcement Directorate's strategy for 2011 to 2012 was published by the Central Bank in December 2010 and sets out the responsibilities of the Enforcement Directorate, its enforcement powers and how it will work.

The Enforcement Directorate is responsible for enforcement cases pursuant to the Administrative Sanctions Procedure and for fitness and probity cases. Its main function is to investigate and take enforcement actions against regulated entities that have failed to comply with relevant regulatory requirements. The Enforcement Directorate has a particular responsibility for anti-money laundering and counter-terrorist financing, EU financial sanctions and for policing the perimeter of the financial services industry in the State, namely through the exercise of functions relating to the monitoring and investigation of unauthorised business activity.

However, under the Central Bank's risk-based regulatory framework, priority will be given to areas where Enforcement Directorate believes the greatest risks lie i.e. regulated financial service providers, including persons concerned in the management of such entities, that have been classified as higher risk or of systemic importance will generally be prioritised to a greater degree than those entities that are deemed to have a lower risk profile.

If you need further information on the above subject matter, please contact the Regulatory & Compliance Unit of Dillon Eustace

Further provisions of Central Bank of Ireland Reform Act commenced

The Minister for Finance has commenced further provisions of the Central Bank Reform Act 2010.

The Order commences the following provisions with effect from 1 January, 2011:

- Section 6 - dealing with arrangements for secondment of certain employees
- Section 15 and Part 5 of Schedule 2 amending provisions of the Consumer Protection Act 2007.

As a result of this Order, the only provisions of the Act not yet commenced are those contained in Schedule 1, Part 1, item 39 inserting Section 32B into the Central Bank Act 1942.

Changes to First Reporting Period Requirement

The requirement that a UCITS' first reporting period be within 9 months of authorisation, has been deemed by the Central Bank to be onerous and uninformative. As such, going forward a UCITS will be required to submit financial statements, whether interim or full, within 9 months of the fund's launch. A similar requirement has been implemented in respect of non-UCITS.

Central Bank Publishes Statistics on Securities Issues of Irish Financial and Non-Financial Firms

On the 10 February, 2011 the Central Bank published updated statistics on market based financing activities of financial and non-financial firms incorporated in Ireland at the end of December 2010. The data contains information on the volume of bonds and notes issued during December, as well as the market valuation of outstanding equity shares by sector of issuer at end December. The sectors of the issuers are: monetary financial institutions; other financial intermediaries, government, non-financial corporates; and insurance companies and pension funds.

For further details please see www.centralbank.ie

Consultation Paper 51: The Fit and Proper Regime in Part 3 of the Central Bank Reform Act, 2010 ("CP51")

On 22 March, 2011 the Central Bank published CP51 regarding its proposed new Fit and Proper Regime. Interested parties are invited to make comments on or before Friday 20 May, 2011 and it is anticipated that the new Fit and Proper Regime will be effective from 1 September, 2011.

The provisions of CP51 are potentially far reaching and contain the Central Bank's proposals for statutory and enforceable standards of fitness and probity. In addition CP51 identifies the senior positions to which the proposed new provisions will apply and includes all entities regulated by the Central Bank with the exception of Credit Unions.

The new Consultation Paper sets out the legislative framework for the new powers under the Central Bank Reform Act, 2010 (the "Act") which has provided the Central Bank with the power to veto senior appointments as well as to suspend or remove people from senior positions across the financial services industry. The new provisions even go so far as to

permit the Central Bank, where appropriate, to prohibit individuals from working in senior industry positions entirely.

A number of transitional arrangements are listed in CP51, including that firms will be required to identify and maintain necessary records of the individuals who are in roles which are subject to the new provisions and firms will be required to provide a list of those individuals to the Central Bank when the new provisions come into effect. Additionally firms will be required to provide a list of pre-approved controlled functions (“PCFs”) as more fully described in CP51, to the Central Bank by 31 December, 2011 and the Board of Directors of firms submitting lists will be required to sign off that they are satisfied the individuals listed are fit and proper according to the standards issued under Section 50 of the Act.

Failure to comply with the fitness and probity requirements in the Act and the standards which the Central Bank may issue in relation thereto may also be subject to sanctions under the Administration Sanctions framework.

Submissions are invited on the proposals on or before 20 May, 2011 and all submissions will be published on the Central Bank’s website www.centralbank.ie Industry comments and queries in relation to CP51 should be directed to fitandproper@centralbank.ie.

For further information or enquiries regarding CP51 please contact your usual contact at Dillon Eustace.

Consultation Paper 52: Proposed changes to regulatory reporting requirements for Irish investment firms (“CP52”)

On 22 March, 2011 the Central Bank published CP52 regarding changes to the existing regulatory reporting regime for Irish investment firms. CP52 relates to three broad areas of change, with the Central Bank proposing:

- (i) to implement FINREP for Irish investment firms in respect of the submission of both management accounts and audited year-end financial statements;
- (ii) modifications to existing returns, including changes to the format of the returns and the addition/removal of certain fields as the Central Bank deems appropriate; and
- (iii) the introduction of new structured returns in six areas: liquidity, asset concentration, error and breach reporting, CRD Pillar 2 ICAAP requirements,

CRD Pillar 3 disclosures and Investor Compensation Company Limited related information.

Interested parties are invited to make submissions on or before 6 May, 2011 (in respect of (i) and (ii)) or 27 May, 2011 (in respect of (iii)) and all submissions will be published on the Central Bank's website www.centralbank.ie unless specifically requested otherwise.

Other Developments

Green IFSC Initiative

The Irish Government is to provide funding to develop Ireland's position as a leading centre for the management of carbon and green finance. The plan includes the establishment of a government supported International Carbon Standard and associated Dublin International Voluntary Offset Registry. It is estimated that 'Green' financial services could create 7,000 jobs over the next five years.

Amendments to International Accounting Standards; IAS 32 Financial Instruments and IAS 1 Presentation of Financial Statements

The IFIA has prepared a guidance paper in order to address the implementation issues for unit trusts related to the classification of puttable instruments and obligations arising on liquidation under the amended IAS 32.

Briefing on Securities Law Reform

The Association for Financial Markets in Europe (the "AFME") has published a briefing paper on securities law reform with a focus on the proposed Securities Law Directive. The briefing states that securities law reform aims to provide legal certainty in respect of:

- (i) the legal effects of acquisition, holding and disposition of dematerialised securities, as ownership of such securities now takes place electronically and not through physical transfer;
- (ii) investor protection in the event of an insolvency of the securities account provider, as investors no longer possess certificated securities but securities that are held in book entry form in a securities account with an account provider; and
- (iii) the determination of the law that is applicable to the trade.

The proposed Securities Law Directive will address three issues, namely:

- (i) the legal framework of holding and disposition of securities held in securities accounts, covering aspects belonging to the sphere of substantive law as well as conflict-of-laws;
- (ii) the legal framework governing the exercise of investor's rights flowing from securities through a "chain" of intermediaries, in particular in cross-border situations;
- (iii) the submission of any activity of safekeeping and administration of securities under an appropriate supervisory regime.

ESMA Updates Table of Short-Selling Measures

The European Securities and Markets Authority ("ESMA") has updated its list of actions taken by Member States relating to short-selling. The changes stem from recent changes in France and Germany where the AMF introduced the short positions disclosure regime developed by ESMA and BaFIN extended notification and publication requirements.

Investment Management Association Response to review MiFID

The Investment Management Association ("IMA") has responded to the European Commission's consultation process regarding its review of MiFID. While the IMA is in favour of a comprehensive financial markets regulatory framework, it has expressed concern that detailed rules which fail to take account of the specifics of different instruments and trading conventions are not workable. It has stated that rules for non-equity markets should be specific to each instrument and should not necessarily be modelled on equity markets. In addition, it believes that transparency rules cannot be made for non-equity markets in general - each type of market must be considered on an individual basis.

The Federation of European Securities Exchange and the European Private Equity and Venture Capital Association ("EVCA") have also published their responses to the Commission's review. They express concern that the provisions of MiFID relating to private equity and venture capital are not consistent throughout the EU. They hope that the Commission can clarify the scope of MiFID, particularly its application to securities of private companies in the context of private equity and venture capital activity.

IOSCO publishes report on Trading of over-the-counter Derivatives

IOSCO has published a report (in response to a request from the Financial Stability Board) entitled "Report on Trading of OTC Derivatives" which evaluates the benefits and challenges associated with the implementation of measures to increase exchange and electronic trading

of OTC derivative products. The Report finds that it is appropriate to trade standardised derivatives contracts with a suitable degree of liquidity on "exchanges or electronic trading platforms," provided that a flexible approach encompassing a range of platforms that would qualify as "exchanges or electronic trading platforms" for derivatives trading is taken. It also identifies characteristics that organised platforms should exhibit in order to fulfil the G-20 Leader's objectives such as registration of the platform with a competent regulatory authority, pre and post transparency arrangements appropriate to the products and active market surveillance capabilities.

Dillon Eustace

This Funds Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the quarter (1 January, 2011 to 31 March, 2011) and, accordingly, may not reflect changes that have occurred subsequent to this period. If you have any queries or would like further information regarding any of the above matters, please refer to the author or your usual contact in Dillon Eustace

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Boston

26th Floor,
225 Franklin Street,
Boston, MA 02110,
United States of America.
Tel: +1 617 217 2866
Fax: +1 617 217 2566

New York

245 Park Avenue,
39th Floor,
New York, NY 10167,
United States of America.
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan.
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Paula Kelleher
Regulatory and Compliance
e-mail: paula.kelleher@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

Breeda Cunningham
Regulatory and Compliance
e-mail: breeda.cunningham@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:
© 2011 Dillon Eustace. All rights reserved.

DILLON  EUSTACE

DUBLIN BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.
www.dilloneustace.ie

In alliance with Arendt & Medernach