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Markets Update Issue 1 2016

Welcome to Issue 1 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

AIFMD

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Investor Money Regulations 2015 for Fund Service Providers – SI 105 of 2015 ("Investor Money Regulations")

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers - SI 105 of 2015 ('Investor Money Regulations') were signed on 25 March 2015 and were due to come into operation on 1 April 2016. The Investor Money Regulations set out requirements in relation to fund service providers holding investor money. The Central Bank has decided to postpone the operation date of the Investor Money Regulations from 1 April 2016 to 1 July 2016 subject to certain additional reporting requirements on transition planning in relation to which the Central Bank will be in communication with fund service providers.

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Central Bank Consultation Papers of Interest

CP101: Consultation on a Capital Requirement Framework for Market Operators

On 12 February 2016, the Central Bank of Ireland issued a Consultation Paper on a proposed Capital Requirement Framework for Market Operators.

Securities Markets

New Procedures for Disclosure of Home Member State under Transparency (Directive 2004/109/EC) Regulations 2007 (as amended)

As referred to in our November Issue, with effect from 27 November 2015, new requirements for the disclosure of home Member State under the Transparency (Directive 2004/109/EC) Regulations (as amended) apply. An issuer is now required to disclose its home Member State to:

- the competent authority of its home Member State;
- the competent authority of the Member State where its registered office is located, where applicable; and
- the competent authorities of all host Member States.

An issuer is also required to disclose its home Member state to the market.

Disclosure of home Member State to the relevant competent authorities should be made using the Standard Form for Disclosure of Home Member State which is published on ESMA's website.

Exemption

The Transparency Directive provides for an exemption from the home Member State disclosure requirements for issuers that had a choice of home Member State and who communicated that choice to the competent authority of their home Member State prior to 27 November 2015.

If an issuer with securities admitted to trading on a regulated market prior to 27 November 2015 did not communicate its choice of Ireland as home Member State to the Central Bank prior to 27 November 2015, the issuer is

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required to make the disclosures detailed above by 26 February 2016. Failure to do so may result in the issuer being deemed to have one or more home Member States.

An issuer is advised to complete the Standard Form for Disclosure of Home Member State and submit same to the Central Bank at regulateddisclosures@centralbank.ie where there is any doubt as to whether the required communication has been made to the Central Bank.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA adds list of clearing members to its public register on EMIR

On 19 February 2016, the European Securities and Markets Authority (ESMA) published an update of its Public Register for the Clearing Obligation.

The update concerns the so-called category 1 clearing members, which are either financial counterparties or non-financial counterparties above the clearing threshold who are clearing members of a central clearinghouse (CCP). Category 1 firms will be the first firms to start the central clearing of certain types of derivative contracts by 21 June 2016.

ESMA has worked with national competent authorities and CCPs to facilitate the identification of those Category 1 counterparties. All EU CCPs and third-country CCPs which are authorised or recognised to clear OTC interest rate swaps in the G4 currencies have now published on their websites the lists of their Category 1 clearing members in a common format. With today's updated list, ESMA is providing the links in an updated version of the Public Register for the Clearing Obligation, Section 1.3.

ESMA's first RTS on the clearing obligation, which establish that certain OTC interest rate derivatives denominated in the G4 currencies (i.e. EUR, GBP, JPY and USD) shall be cleared by central counterparties, entered into force on 21 December 2015.

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ESMA publishes transactions of its Transparency Directive standard form for home Member State disclosure

On 18 February 2016, the European Securities and Markets Authority (ESMA) published translations of its standard form for the disclosure of home Member State by issuers under the Transparency Directive (TD).

The TD requires issuers whose securities are admitted to trading on an EU regulated market to disclose their home Member State, to their home Member State's competent authority, all host Member States' competent authorities and the competent authority of the Member State in which the issuer has its registered office.

The purpose of the form is to simplify the filing procedure for issuers and to provide national authorities with a consistent set of information.

ESMA updates EMIR Q&A

On 16 February 2016, the European Securities and Markets Authority (ESMA) issued an update of its Question and Answers (Q&As) regarding the implementation of the European Market Infrastructure Regulation (EMIR).

The Q&A clarifies how the clearing obligation should apply to swaps resulting for the exercise of a swaption, including during the frontloading period and the approach on frontloading that was adopted in the ESMA's first RTS (on the clearing obligation, which entered into force on 21 December 2015.

ESMA's EMIR Q&As aim at providing clarity to market participants ahead of the various compliance deadlines resulting from the first RTS on the clearing obligation, which establish that certain OTC interest rate derivatives denominated in the G4 currencies (i.e. EUR, GBP, JPY and USD) shall be cleared by central counterparties.

ESMA issues follow-up review on money market fund guidelines

On 16 February 2016, the European Securities and Markets Authority (ESMA) issued a follow-up peer review into the compliance of national competent authorities (NCAs) with guidelines regarding money market funds.

This report follows up an earlier peer review already published in April 2013, focusing on eight NCAs that were not compliant with the guidelines.

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The follow-up peer review covers the period from 1 May 2014 to 1 May 2015. Peer reviews and their follow up are an important means of identifying areas for further convergence in the application of Union law and of incentivising convergence.

This report provides an update on the findings of the first peer review and sets out the result of this second assessment by peers. Out of the eight jurisdictions subject to this follow-up peer review assessment, in seven countries the guidelines are now applied. The countries now fully applying the guidelines are: Bulgaria, Cyprus, Liechtenstein, Lithuania, Latvia, Malta and Portugal.

ESMA announces Open Hearing on MAR guidelines

On 12 February 2016, the European Securities and Markets Authority (ESMA) held an open hearing on its Consultation Paper published on the 28th of January 2016 on two sets of draft Guidelines to be issued by ESMA under the remit of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (MAR).

ESMA resumes US CCP recognition process following EU-US agreement

On 10 February 2016, the European Securities and Markets Authority (ESMA) welcomed the common approach announced today by the European Commission and the US Commodity Futures Trading Commission (CFTC) on the equivalence of CCP regimes.

This is an important step towards market participants being able to use clearing infrastructures in both the US and Europe, and for the proper functioning of the global derivatives markets.

Once the equivalence decision by the European Commission on the US regime for CFTC-supervised CCPs is adopted, ESMA will rapidly resume the recognition process of specific CFTC-supervised US CCPs that had applied to ESMA to be recognised in the EU.

While the European Market Infrastructure Regulation (EMIR) gives ESMA up to 180 working days to conclude that recognition, ESMA intends to do everything within its powers to shorten that period to the maximum extent and proceed with recognition as soon as the US applicant CCPs meet the conditions contained in those equivalence decisions.

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Given the 21 June 2016 deadline for the start of the clearing obligation in the EU, ESMA understands that US CCPs will have a strong interest in becoming fully compliant with the EU equivalence conditions in order to be eligible to fulfil the EU clearing obligation requirement, which should help in shortening that period. ESMA cannot commit to any specific dates for the recognition decisions, given that such decisions mainly depend on the compliance by CCP applicants.

ESMA will also consider as a matter of priority the next steps on its consultation on the amendment to its Regulatory Technical Standard (RTS) regarding the minimum period of risk for different types of clearing accounts in EU CCPs.

ESMA publishes responses to the Consultation on PRIIPs Key Information Documents

On 10 February 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on PRIIPs Key Information Documents.

ESMA publishes responses to the Consultation on access, aggregation and comparison of TR data

On 10 February 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on access, aggregation and comparison of TR data.

ESMA assesses Turkish laws and regulations on prospectuses

On 8 February 2016, the European Securities and Markets Authority (ESMA) reviewed Turkish legislation governing prospectus disclosure requirements and concludes that a prospectus drawn up against Turkish requirements can constitute a valid prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State.

This Opinion should be read in conjunction with ESMA's opinion on the Framework for the assessment of third country prospectuses under Article 20 of the Prospectus Directive.

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ESMA updates its EMIR Q&A

On 4 February 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes new answers regarding CCP's default management, competent authorities' access to trade repository data and reporting of notional in position reports.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA publishes responses to the EMIR Consultation on MPOR client accounts

On 4 February 2016, the European Securities and Markets Authority (ESMA) has the responses received to the Consultation on review of Article 26 of RTS No 153/2013 with respect to MPOR for client accounts.

ESMA issues opinions on UK pension schemes to be exempt from central clearing under EMIR

On 2 February 2016, the European Securities and Markets Authority (ESMA) issued a set of opinions regarding the exemption of 16 UK pension schemes from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

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Today's document published by ESMA contains opinions on 16 UK-based pension schemes where the UK Financial Conduct Authority (FCA) is the competent authority for securities markets. After the exemptions are granted by the FCA, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA issues technical standards on settlement discipline under CSDR

On 1 February 2016, the European Securities and Markets Authority (ESMA) published draft regulatory technical standards (RTS) on settlement discipline which ESMA has to deliver for the implementation of the Central Securities Depository Regulation (CSDR).

The CSDR harmonises the authorisation and supervision of EU central securities depositories. It also introduces a mandatory buy-in and other settlement discipline measures to tackle settlement fails. ESMA's RTS includes details on:

- measures for preventing settlement fails, through various processes and functionalities, such as:
- automated matching;
- partial settlement;
- hold and release mechanism.
- measures for monitoring and addressing settlement fails, in particular:
- the cash penalties mechanism; and
- the buy-in process.

The European Commission has now three months to endorse the RTS, followed by a non-objection period of the European Parliament and Council. These rules will then enter into force two years after their publication in the Official Journal of the European Union. This will give enough time to relevant stakeholders to implement the changes needed to comply with the CSDR.

ESMA publishes consolidated UCITS Q&A

On 1 February 2016, the European Securities and Markets Authority (ESMA) published a consolidated Questions and Answers (Q&A) on the

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application of the Undertakings for the Collective Investment In Transferable Securities Directive (UCITS).

The consolidated Q&A include new questions on additional documents funds need to provide for UCITS V. This new Q&A also brings together the following four existing ESMA Q&As on UCITS:

- The Key Investor Information Document (KIID) for UCITS (2015/631);
- Q&A on ESMA's guidelines on ETFs and other UCITS issues (2015/12);
- Notification of UCITS and exchange of information between competent authorities (2012/428); and
- Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS (2013/1950).

The UCITS Directive is a detailed, harmonised framework for investment funds that can be sold to retail investors through the EU. This means that funds authorised in one Member State can be marketed in another Member State using a passporting mechanism. Originally introduced in 1985, the UCITS rules have been revised several times, most recently via the UCITS V Directive which comes into force on 18 March 2016.

ESMA updates registers under MiFID and Short Selling Regulation

On 1 February 2016, the registers under MiFID and the Short Selling Regulation were migrated to the global ESMA Registers web portal.

This migration concerns the following lists:

- Shares admitted to trading on regulation markets
- Exempted shares
- Systematic internalisers
- Regulated Markets
- Multilateral trading facilities
- Central counterparties

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To ensure a smooth transition, from 1 February 2016 to 31 March 2016 the data will be available in both Portals. On 1 April 2016 the old portal will be shut down and not accessible. For automated access to these lists, please consult the updated web service procedure also published today.

ESMA consults on MAR guidelines regarding market soundings and delayed disclosure of inside information

On 28 January 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft guidelines clarifying the implementation of the Market Abuse Regulation (MAR). MAR strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviours. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

ESMA was seeking stakeholder's feedback on draft guidelines:

- for persons receiving market soundings (MAR introduces a detailed regime for "market soundings"); and
- on legitimate interests of issuers to delay disclosure of inside information (MAR provides the possibility, under certain circumstances, to delay the disclosure of insider information) and on situations in which the delay of disclosure is likely to mislead the public.

ESMA considered the feedback to this consultation with a view to finalising the two sets of Guidelines and publishing a final report by early Q3 2016. MAR will directly apply in EU Member States from 3 July 2016, amending the previous Market Abuse Directive (MAD). As provided for in MAR, ESMA already delivered Draft Technical Standards, setting out further detailed rules required by MAR, notably in relation to disclosing market participants conducting market soundings. ESMA is still preparing a consultation paper on a third set of guidelines required under MAR and relating to the information expected or required to be published in relation to commodity derivatives.

ESMA publishes letter from European Commission on AIFMD passport

On 19 January 2016, the European Securities and Markets Authority (ESMA) published the letter it received from the European Commission

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(EC) in respect of its advice on the application of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU AIFMs and AIFs, and ESMA's opinion on the functioning of the passport for EU AIFMs and on the national private placement regimes (NPPRs).

The EC had asked ESMA to complete its assessment of the regimes of the USA, Hong Kong, Singapore, Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia by 30 June 2016.

The EC agreed with ESMA's suggestion that it produce another opinion on the functioning of the EU passport and NPPRs once the AIFMD has been fully transposed in all the EU and there is more experience on the functioning of this framework. ESMA suggested it produce another opinion because the delay in implementing the AIFMD, together with the delay in the transposition of the Directive in some Member States, made it difficult for ESMA to provide a definitive assessment by July 2015, the initial legislative deadline.

ESMA issues negative opinion on extending Greek short selling ban

On 11 January 2016, the European Securities and Markets Authority (ESMA) issued a negative opinion on a proposed extension of the emergency short selling prohibition, regarding Attica Bank S.A. (ISIN GRS001003011), proposed by the Hellenic Capital Market Commission (HCMC).

The HCMC had proposed extending the current prohibition on short sales in any shares of Attica Bank admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed, which expires at 24:00:00 (CET), the 11 January 2016.

The temporary prohibition included sales of shares covered by subsequent intraday purchases and applied to all depository receipts (ADRs, GDRs) and warrants representing shares of Attica Bank admitted to trading on the Athens Exchange. The short selling measure applies to any natural or legal person, irrespective of their country of residence, but would be subject to the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes.

ESMA considers that adverse developments that had constituted a serious threat to market confidence in the Greek market have eased and therefore

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the proposed prolongation of the ban would not be appropriate or proportionate.

If the HCMC decides to renew the emergency short selling prohibition contrary to ESMA's opinion, the HCMC would have to publish their reasons for doing so within 24 hours.

ESMA assesses regulators' compliance with market maker exemption under Short-Selling Regulation

On 5 January 2016, the European Securities and Markets Authority (ESMA) published the results of a targeted review it conducted among five national competent authorities (NCAs) under the Short-Selling Regulation (SSR).

Public Hearing on KID for PRIIPs

On 23 December 2015, the European Supervisory Authorities (the ESAs – the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA), and the European Banking Authority (EBA)) held a Public Hearing on the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs) in Frankfurt on 9 December 2015.

The ESAs are currently consulting on their regulatory technical standards (RTS) for PRIIPS and the purpose of the Public Hearing was to explain the PRIIPs consultation paper to stakeholders and provide an opportunity for them to raise questions. The consultation closes on 29 January 2016.

ESMA consults on transaction reporting, reference data, record-keeping and clock synchronisation under MiFIR

On 23 December 2015, the European Securities and Markets Authority (ESMA) published a Consultation Paper (CP) on guidelines regarding the Markets in Financial Instruments Regulation (MiFIR) under which ESMA has to develop the implementing details.

The CP seeks stakeholders feedback on future guidance regarding:

- Transaction Reporting;
- Reference Data;
- Order Record Keeping; and
- Clock Synchronisation

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The CP specifies individual scenarios applicable to a given transaction or order activity. Each of the scenarios is accompanied with the sample of XML ISO 20022 format to be used by firms to represent the values to be reported.

In addition to the transaction reporting and order record keeping scenarios, the CP provides clarifications on the application of the relevant MiFiD II requirements which were requested by market participants during earlier consultations but could not be addressed by the final technical standards due to the level of detail of such requests. ESMA may need to add further clarifications to this guidance as dialogue with market participants raises new issues.

The consultation is open for comment until 23 March 2016.

ESMA publishes results of second Market Abuse Directive peer review

On 22 December 2015, the European Securities and Markets Authority (ESMA) published the results of its follow-up review of national competent authorities' (NCAs) supervisory regimes with regard to the Market Abuse Directive (MAD).

ESMA issues favourable opinion extending Greek HCMC short selling ban

On 21 December 2015, the European Securities and Markets Authority (ESMA) issued its official opinion agreeing to an extension of the emergency short selling prohibition by the Hellenic Capital Market Commission (HCMC) on the shares of certain credit institutions under the Short Selling Regulation that expires at 24:00:00 (CET) on Monday 21 December 2015.

The measure will remain in place until 24:00:00 (CET) on 11 January 2016 and temporarily prohibits short sales in any shares of Attica Bank S.A. (ISIN GRS001003011) admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed. The temporary prohibition would include sales of shares covered by subsequent intraday purchases. The temporary prohibition of short selling would apply to all depository receipts (ADRs, GDRs) and warrants representing shares of Attica Bank S.A. (ISIN GRS001003011) admitted to trading on the Athens Exchange. As for previous bans, an exemption for market making activities in the affected financial instruments would be foreseen.
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The short selling measure applies to any natural or legal person, irrespective of their country of residence, but would be subject to the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes.

ESMA considers that adverse developments which constitute a serious threat to market confidence in the Greek market still persist and that the proposed measure is appropriate and proportionate to address those threats.

ESMA publishes responses to the Consultation on indirect clearing under EMIR and MiFIR

On 21 December 2015, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on indirect clearing under EMIR and MiFIR.

The Consultation shall apply from 3 January 2016.

ESMA publishes Final Report on MiFID II Guidelines on assessment and knowledge of competence

On 17 December 2015, the European Securities and Markets Authority (ESMA) published the Final Report on guidelines for the assessment of knowledge and competence.

These guidelines are intended to enhance investor protection by increasing the knowledge and competence of natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of investment firms.

As required under Article 25(9) of MiFID II, these guidelines specify the criteria for the assessment of the necessary knowledge and competence requirements of investment firms' staff. These guidelines have been developed to enable firms to fulfil their obligations under Articles 24 and 25 of MiFID II, such as meeting general conduct of business principles, information and reporting to clients, and suitability and appropriateness requirements, through the attainment of appropriate qualifications and appropriate experience by their staff.

The guidelines will come into effect on 3 January 2017.

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ESMA sees continued high levels of risk in financial markets

On 16 December 2015, the European Securities and Markets Authority (ESMA) issued its Risk Dashboard for the European securities markets covering the third quarter of 2015.

Overall, the report found that risk levels remained high compared to the last quarter -- including elevated risks for investors, infrastructures and services, and the financial system at large. Market risks indicators continued to remain at "very high", following a continuous build-up in the preceding quarters. Key risk drivers were the low-interest-rate environment, high asset valuations, potential spill-overs from emerging markets and fiscal and political developments within the EU. ESMA's market risk outlook remains unchanged at "very high".

ESMA's credit risk assessment remains unchanged at very high levels. While still at a lower level, liquidity risk is under scrutiny due to intensifying pressures, while contagion and operational risk remain unchanged at high and elevated levels. Systemic stress remained at a high level in 3Q15, driven by prolonged market uncertainty over sovereign debt in the EU and rising concerns over market developments in emerging markets. A low interest rate environment still prevails in the EU as market developments in currency and commodity markets raised concerns over potential deflationary pressures. The macroeconomic environment saw increased uncertainty over the future monetary policy stance in the EU and in the US. This, together with potentially thin liquidity on some more vulnerable markets could amplify the risk of a reversal in global risk.

ESMA publishes updated CRA Q&A

On 16 December 2015, the European Securities and Markets Authority (ESMA) published an updated questions and answers on the application of the Credit Rating Agencies Regulation.

The revised Q&A clarifies the definition of unsolicited credit ratings, specifically whether a credit rating issued upon the request of a person different from the rated entity/issuer and a related third party constitutes a solicited credit rating.

ESMA publishes updated AIFMD Q&A

On 15 December 2015, the European Securities and Markets Authority (ESMA) published an updated questions and answers on the application of

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the Alternative Investment Fund Managers Directive (AIFMD). The Q&A include a new questions and answers on the depositary liability regime.

ESMA updates its Q&A document on prospectus related issues

On 15 December 2015, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures. In this 23rd version of the Q&A, a new question 96 has been added regarding the level of disclosure which should be included in a prospectus related to securities which may be subject to write-down or conversion powers under the Bank Recovery and Resolution Directive (BRRD). Furthermore, the existing question 26 on calculation of the €5 million threshold in Article 1(2)(h) of the Prospectus Directive has been extended to cover also calculation of the €75 million threshold in Article 1(2)(j).

Report on investment firms

On 14 December 2015, the European Securities and Market Authority (ESMA) cooperated with the European Banking Authority (EBA) in the development of an EBA report on investment firms. This report was issued in response to a call for advice by the European Commission on the prudential requirements applicable to investment firms addressed to EBA in December 2014.

ESMA issues standards on reporting, cooperation & suspensions under MiFID II

On 11 December 2015, the European Securities and Markets Authority (ESMA) published Implementing Technical Standards (ITS) regarding the implementation of the Market in Financial Instruments Directive (MiFID II). ESMA's ITS translate how the legislation will apply in practice to market participants, market infrastructures and national supervisors.

The rules ESMA is delivering today on MiFID II specify standard forms, templates and procedures which are to be used in the future in the following areas:

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- cooperation arrangements for trading venue of substantial importance in a host Member State;
- suspension and removal of financial instruments from trading on a Regulated Market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF);
- authorisation of data reporting services providers;
- position reporting and weekly position reports;
- cooperation between competent authorities in supervisory activities, on-site verifications, and investigations and for the exchange of information;
- consultation of other competent authorities prior to granting an authorisation; and
- submission of information on sanctions and measures.

The publication of today's ITS follows two other sets of Technical Standards on the implementation of MiFID II published in June and September. ESMA's different sets of Technical Standards have been sent for endorsement to the European Commission.

ESMA consults on improved access to trade repository data

On 11 December 2015, the European Securities and Markets Authority (ESMA) published a consultation paper which proposes to enhance the current functionalities offered by trade repositories (TRs) for data access under the European Market Infrastructure Regulation (EMIR).

ESMA thinks that the current rules for TR access should be significantly improved as currently, the comparability of data is not sufficient.

In order to further improve the quality of data reported under EMIR, ESMA proposes amendments to the current rules in order to ensure direct and immediate access to data by national competent authorities (NCAs) and to facilitate the aggregation and comparison of data across trade repositories.

The proposed improvements refer to the following aspects:

- standardised output format of the TR data, based on international ISO standards, allowing better comparison and aggregation of data across repositories;

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- minimum types of data queries that need to be available for the authorities;
- standardised and secure data exchange, based on ISO standards, between TRs and NCAs;
- standard frequencies for the provision of direct and immediate access to TR data;
- secure machine-to-machine connection and use of data encryption protocols.

ESMA seeks stakeholders' feedback on it's proposed amendments by 1 February 2016.

ESMA's new IT Hub which is currently under development will support all the proposed functionalities.

ESMA seeks candidates for its stakeholder representative group

On 3 December 2015, the European Securities and Markets Authority (ESMA) sought candidates to represent the interests of financial markets stakeholders of all types as members of its Securities Markets Stakeholders Group (SMSG).

The SMSG helps to facilitate consultation between ESMA, its Board of Supervisors and stakeholders on ESMA's areas of responsibility and provides technical advice on its policy development. This helps to ensure that stakeholders can contribute to the formulation of policy from the beginning of the process.

The successful candidates will take up their roles in July 2016.

Open Consultation Papers of Interest

EBA consults on draft guidelines on implicit support for securitisation transactions

On 20 January 2016, the European Banking Authority (EBA) launched a public consultation on draft Guidelines on implicit support for securitisation transactions. The objective of the Guidelines is to provide clarity on what constitutes arm's length conditions and when a transaction

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is not structured to provide support for securitisations. The consultation runs until 20 April 2016.

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Banc Ceannais na hÉireann
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Markets Update

Issue 2 2016

24 March 2016

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Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

AIFMD

AIFMD Q&A – Eighteenth Edition Published

On 24 March 2016, the Central Bank published an eighteenth edition of the AIFMD Q&A.

ID 1100 has been amended to make reference to the publication of guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies". New questions ID 1101 and ID 1102 have also been added dealing with the Central Bank's updated Guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies".

A new question ID 1103 has been added dealing with the Securities Financing Transactions Regulation.

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UCITS

UCITS Q&A – Twelfth Edition Published

On 24 March 2016, the Central Bank published a twelfth edition of the UCITS Q&A.

ID 1057 has been amended to make reference to the publication of guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies". New questions ID 1060 and ID 1061 have also been added dealing with the Central Bank's updated Guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies".

A new question ID 1062 has been added dealing with the Securities Financing Transactions Regulation.

Securities Markets

Regulatory Technical Standards for approval and publication of the prospectus and dissemination of advertisements effective 24 March 2016

Please be advised that Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No. 809/2004 was published on 4 March 2016 in the Official Journal of the European Union.

It shall come into force on 24 March 2016.

Investor Money Regulations

The Investor Money Regulations will be imposed, for the first time, on fund service providers holding investor money in collection accounts; the Investor Money Regulations will be effective from 1 July 2016.

The Central Bank has also published Guidance for Fund Service Providers to assist Industry in interpreting the regulations.

On 5 October 2015, the Central Bank published the first edition of the Investor Money Q&A. The Investor Money Regulations Q&A sets out
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answers to queries likely to arise in relation to the implementation of the Investor Money Regulations (IMR). It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered.

Speeches to Markets Industry

Address by Gareth Murphy, Director of Markets Supervision, Central Bank of Ireland at the launch of Duff and Phelps Global Regulatory Outlook

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European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA consults on Securities Financing Transaction Regulation

On 11 March 2016, the European Securities and Markets Authority (ESMA) issued a Discussion Paper (DP) on rules under the Securities Financing Transaction Regulation (SFTR).

The SFTR, published in December 2015, is the European Union's response to the global initiative to bring more transparency to shadow banking activities. The new rules on transparency require both financial and non-financial market participants to report details of their securities financing transactions. Details to be reported include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

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The DP sets out proposals for implementing the reporting framework under the SFTR, including tables of the fields with the proposed data to be reported, and the registration requirements for those Trade Repositories (TRs) which want to accept reports on security financing transactions.

In line with the SFTR requirement to build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories, ESMA has developed its proposals by building on its experience with EMIR and other EU-wide reporting regimes in order to align reporting standards to the extent possible.

ESMA sought feedback from all stakeholders, in particular, from entities active in the repo, securities lending/borrowing and commodities lending/borrowing markets. It also particularly welcomes feedback from persons carrying out buy/sell-back and margin lending, TRs, central counterparties (CCPs) and central securities depositories (CSDs).

Next steps

The consultation closes on 22 April 2016. ESMA will use the responses to its DP to develop detailed rules on which it will publish a follow-up consultation in the second half of 2016. ESMA shall send its draft rules for approval to the European Commission by 13 January 2017.

ESAs publish final draft technical standards on margin requirements for non-centrally cleared derivatives

On 9 March 2016, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) published the final draft Regulatory Technical Standards (RTS) outlining the framework of the European Market Infrastructure Regulation (EMIR).

These RTS cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

The draft RTS contain the following provisions:

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

- For OTC derivatives not cleared by a Central Counterparty (CCP), the draft RTS prescribe that counterparties have to exchange both initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.
- The draft RTS outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts.
- The draft RTS lay down the operational procedures related to documentation, legal assessments of the enforceability of the agreements and the timing of the collateral exchange.
- The draft RTS cover the procedures for counterparties and competent authorities related to the treatment of intragroup derivative contracts.

The RTS will be applied in a proportionate manner to allow counterparties to phase in the requirements.

Legal framework and background

These draft RTS have been developed on the basis of Article 11(15) of Regulation (EU) No 648/2012 (EMIR), which establishes provisions aimed at increasing the safety and transparency of the over-the-counter (OTC) derivatives markets in the EU.

In developing these standards, the ESAs have taken into consideration the need for international consistency and have, therefore, used the framework established by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) and the BCBS supervisory guidance for managing risks associated with the settlement of foreign exchange transactions, while taking into account the specific features of the European financial market.

In order to address risks related to the derivative markets, the European Parliament and the Council have adopted the European Market Infrastructure Regulation (EMIR) – formally known as Regulation EU No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

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EMIR establishes provisions aimed at increasing the safety and transparency of the OTC derivatives markets and requires OTC derivative contracts to be cleared, derivative transactions to be reported to trade repositories and sets a framework to enhance the safety of central counterparties (CCP).

The EMIR was published on 4 July 2012 and entered into force on 16 August 2012. It is directly applicable in all EU Member States.

Notes for editors

The Joint Committee is a forum for cooperation that was established on 1 January 2011, with the goal of strengthening cooperation between the three European Supervisory Authorities (ESAs) (European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority).

The Joint Committee allows the ESAs to cooperate in ensuring consistency in their practices. In particular, the Joint Committee works in the areas of supervision of financial conglomerates, accounting and auditing; micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability; retail investment products and measures combating money laundering.

ESMA issues report on risks and costs of CCP interoperability

On 1 March 2016, the European Securities and Markets Authority (ESMA) issued it's final report on systemic risk and cost implications of interoperable arrangements between central clearing houses (CCPs) established under the European Market Infrastructure Regulation (EMIR).

European Banking Authority (EBA)

MiFID Firms

EBA issues amended standards on supervisory reporting for institutions

On 23 March 2016, the European Banking Authority (EBA) published its final draft Implementing Technical Standards (ITS) amending the

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Commission's Implementing Regulation (EU) No. 680/2014 on supervisory reporting.

Consultation on Guidelines on corrections to modified duration for debt instruments

On 22 March 2016, the European Banking Authority (EBA) published its Consultation on Guidelines on corrections to modified duration for debt instruments.

ESAs publish final draft technical standards on margin requirements for non-centrally cleared OTC derivatives

On 8 March 2016, the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) published today the final draft Regulatory Technical Standards (RTS) outlining the framework of the European Market Infrastructure Regulation (EMIR).

These RTS cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

The draft RTS contain the following provisions:

- For OTC derivatives not clear by a Central Counterparty (CCP), the draft RTS prescribe that counterparties have to exchange both initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.
- The draft RTS outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts.
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EMIR establishes provisions aimed at increasing the safety and transparency of the OTC derivatives markets and requires OTC derivative contracts to be cleared, derivative transactions to be reported to trade repositories and sets a framework to enhance the safety of central counterparties (CCP).

The EMIR was published on 4 July 2012 and entered into force on 16 August 2012. It is directly applicable in all EU Member States.

Open Consultation Papers of Interest

EBA Consultation on COREP

On 7 March 2016, the European Banking Authority (EBA) launched a public consultation on the inclusion of prudent valuation into Common Reporting (COREP), the reporting framework through which EU banking

institutions report supervisory information. The amendments proposed by the EBA reflect the prudent valuation requirements in Commission Delegated Regulation (EU) No 2016/101. This public consultation will run until 30 March 2016.

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Banc Ceannais na hÉireann
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Markets Update

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2 June 2016

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Central Bank of Ireland

AIFMD

CP86: Fund Management Company Effectiveness

The Central Bank has today, 2 June 2016, issued a further consultation paper on Fund Management Company Effectiveness. Consultation Paper CP86 – Third consultation addresses managerial functions, operational issues and procedural matters. It sets out the work already undertaken by the Central Bank in relation to governance of fund management companies and outlines the proposed approach to Compliance and Supervisability issues. Respondents are invited to comment on the proposed rules and guidance.

Responses should be submitted no later than 25 August 2016.

CP99: Consultation on Amendments to the AIF Rulebook

The Central Bank has today, 2 June 2016, published its feedback statement CP99: Consultation on Amendments to the AIF Rulebook. This

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summarises the responses received along with the Central Bank's comments and decisions.

Nineteenth Edition of the AIFMD Q&A

On 2 June 2016, the Central Bank published a nineteenth edition of the AIFMD Q&A. The new questions added are: ID 1104 (Fund Management Company - organisational effectiveness); ID 1105 (Rules - significant Influence in the context of certain types of AIFs); and ID 1106-ID 1107 (Companies Act 2014). (ID 1106 was previously issued in the form of a general information note and included in the Markets Update published on 12 June 2015.)

UCITS

Publication of First Set of Amending Central Bank UCITS Regulations 2015

The Central Bank UCITS Regulations 2015 required amendment as a consequence of the implementation of UCITS V. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (UCITS)(Amendment) Regulations 2016 are in the process of being finalised and the amended Regulations will be published shortly. Notification of this publication will appear in the 'What's New' section of the Central Bank website and in the RSS feed.

CP105: Consultation on Amendments to the Central Bank UCITS Regulations

The Central Bank has today, 2 June 2016, issued a consultation paper CP105 - Consultation on amendments to the Central Bank UCITS Regulations. This consultation closes on the 25 August 2016.

Thirteenth Edition of UCITS Q&A

On the 2 June 2016, the Central Bank published a thirteenth edition of the UCITS Q&A. The new questions added are: ID 1063 (UCITS Management Company - organisational effectiveness); ID 1064 (share class hedging); and ID 1065-ID 1066 (Companies Act 2014). (ID 1065 was previously issued in the form of a general information note and included in the Markets Update published on 12 June 2015.) An existing question - ID 1013 - has been amended. This deals with past performance data and the heading of this section has been revised accordingly.

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Securities Markets

Market Abuse Regulation: The Central Bank has amended its website guidance on the Market Abuse Regime

The new Market Abuse Regime, which consists of the Market Abuse Regulation (EU 596/2014 - 'MAR') and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU or 'CSMAD' or 'MAD II') became applicable in Ireland and across the European Union on 3 July 2016. The new regime replaces the previous Market Abuse Directive (2003/6/EC).

In Ireland, the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016)(2016 Regulations) is the Irish statutory instrument transposing CSMAD (and elements of MAR including the delegated acts) into Irish law. It replaces the previous Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342 of 2005).

The Central Bank of Ireland is the single administrative competent authority for the purposes of Irish market abuse law, as provided under the 2016 Regulations. The Securities and Markets Supervision Division of the Central Bank of Ireland is responsible for the competent authority functions arising from MAR, CSMAD and the 2016 Regulations.

The Central Bank of Ireland has issued revised Market Abuse Rules and Guidance on "Market Abuse Regulatory Framework", updated to align with MAR and the implementation of the new Market Abuse Regime.

The introduction of MAR and CSMAD forms part of the European regulatory reform agenda for financial services, aimed at ensuring greater transparency and market integrity.

- The new Market Abuse Regime strengthens the legal framework underpinning the function of detecting, sanctioning and deterring market abuse. It extends its scope to apply to new markets, new trading platforms and new behaviours and to cover a broader range of financial instruments. It contains prohibitions for insider dealing, market manipulation and unlawful disclosure of inside information and provisions to prevent and detect these.
- MAR introduces a number of changes including a broadening of the scope of legislation to include trading platforms, such as Multilateral Trading Facilities (MTFs), and Over the Counter (OTC)

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trades, including in derivatives. Other changes include additional notification requirements in relation to suspicious activity, delay in the disclosure of inside information, managers' transactions and enhanced requirements regarding the preparation and maintenance of insider lists and the handling of inside information.

- The Market Abuse Directive introduces minimum rules for criminal sanctions for market abuse and widens the range of activities which constitute an offence, to include, for example, inciting, aiding and abetting the commission of certain market abuse offences.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA publishes Final Report on MiFID II Guidelines on cross-selling practices

On 22 December 2015, the European Securities and Markets Authority (ESMA) published the Final Report on guidelines on cross-selling practices.

The primary purpose of these guidelines is to establish a coherent and effective approach in the supervision of firms by competent authorities which will contribute to the enhancement of investor protection across Member States. The guidelines will therefore help to clarify the expected standard of conduct and organisational arrangements for those firms engaged in cross-selling practices in order to mitigate any associated investor detriment.

These Guidelines are currently due to come into effect on 3 January 2017 but their final effective date will correspond with the effective date of MiFID II.

Final Report – ESMA Guidelines on Alternative Performance Measures

In Markets Update Issue 4 of 2015, the Central Bank highlighted the publication by ESMA of the Final Report- ESMA Guidelines on Alternative Performance Measures on 30 June 2015. The Central Bank would like to

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remind issuers and persons responsible for the prospectus that these guidelines are effective from 3 July 2016.

The aim of the guidelines is to encourage European issuers to publish transparent, unbiased and comparable information on their financial performance in order to provide users with a comprehensive understanding of their performance.

MiFID practices for firms selling financial instruments subject to the BRRD resolution regime

ESMA published on 2 June 2016 a Statement reminding banks and investment firms of their responsibility to act in their clients' best interests when selling bail-in-able financial instruments. New Banking Recovery and Resolution Directive rules in force since January 2016 mean firms are likely to issue a significant amount of potentially loss-bearing instruments to fulfil their obligations and ESMA is concerned investors – in particular retail investors - are unaware of the risks they may face when buying these instruments.

Q&A on the provisions of CFDs and other speculative products to retail investors under MiFID

ESMA published on 1 June 2016 an updated version of its Questions and Answers Relating to the provision of CFDs and other speculative products to retail investors under MiFID.

ESMA issues Q&A on MAR implementation

On 30 May 2016, the European Securities and Markets Authority (ESMA) issued Question and Answers (Q&A) regarding the implementation of the Market Abuse Regulation (MAR).

The MAR Q&A provides common answers to question regarding practical issues regarding the implementation of the new MAR regime. This Q&A clarifies the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions.

Q&As are an important tool to promote common supervisory approaches and practices in the application of MAR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities, their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the MAR requirements.
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The Market Abuse Regulation (MAR) aims at enhancing market integrity and investor protection. MAR updates and strengthens the existing MAD framework, which will be repealed when MAR applies as of 3 July 2016, by extending its scope to new markets and trading strategies and by introducing new requirements. The implementation of the MAR will result in an EU-wide market abuse regime.

ESMA issues technical standards on indirect clients

On 26 May 2016, the European Securities and Markets Authority (ESMA) issued two final draft regulatory technical standards (RTS) on indirect clearing under the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR) respectively. The draft RTS clarify provisions of indirect clearing arrangements for OTC and exchange-traded derivatives and help to ensure consistency and that an appropriate level of protection for indirect clients exists.

The draft RTS provide provisions on the following key points:

- Default management: in order to take into account that there can be a conflict of law between EU regulation and certain national insolvency regimes, the draft RTS propose an obligation of means, i.e. relying on having appropriate default procedures and committing to trigger them;
- Choice of account structures to be offered to indirect clients: the draft RTS provide a choice of possible account structures that reflect the current practice in the OTC derivative and the exchange traded derivative markets in terms of level of segregation. Furthermore, the number of accounts required has been simplified to minimise the operational burden for market participants; and
- Long chains: the draft RTS, under certain conditions, allow indirect clearing chains that are longer than the standard chains of four entities.

ESMA has sent its draft RTS on indirect clients for endorsement to the European Commission which has three months to accept or reject them. This is followed by a non-objection period by the European Parliament and Council.

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Background

The publication of today's final draft RTS follows a public consultation conducted end-2015. In general, EMIR introduced a clearing obligation for certain OTC derivative contracts. MiFIR extended the scope of the clearing obligation to all derivative transactions concluded on a regulated market. This means that the vast majority of derivative transactions will be cleared. Counterparties will clear their transactions by becoming a clearing member itself, by becoming a client of a clearing member or by establishing an indirect clearing arrangement with a clearing member.

ESMA clarifies the reporting of reference data under MAR from 3 July 2016

On 25 May 2016, the European Securities and Markets Authority (ESMA) issued a Communication clarifying the reporting of reference data under the Market Abuse Regulation (MAR).

Following the agreed later implementation of the Markets in Financial Instruments Directive II (MiFID II) and Regulation (MiFIR), some of the MAR provisions will be aligned to the new MiFID II timelines.

The agreement on MIFID II provides for postponement of the application date of certain provisions of MAR, in particular the Article 4 thereof until the same date. Specifically, the requirements set out under Article 4(2) and (3) will apply from 3 January 2018, whilst the application date of the requirement in Article 4(1) remains 3 July 2016.

ESMA proposes to amend draft MiFIR standard on transaction reporting

On 4th May 2016, the European Securities and Markets Authority (ESMA) published a request for amending its draft Regulatory Technical Standards (RTS) on transaction reporting (RTS 22) under the Markets in Financial Instruments Regulation (MiFIR).

The RTS 22 were submitted to the Commission on 28 September 2015. ESMA acknowledges the need to amend RTS 22 due to an unintended omission in the final stage of drafting the RTS.

The amendment introduced by ESMA relates to the list of instances that are not considered to be reportable transactions for the purpose of Article 26 of MiFIR. In particular, the amendment ensures that investment firms do

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not submit transaction reports for transfers of collateral, which would be costly and bring no supervisory benefit.

The necessary amendment has been submitted to the European Commission (EC). ESMA anticipates that the amendment will be taken into account in the context of the EC's endorsement of the draft RTS 22.

ESMA publishes responses to the DP on draft RTS and ITS under SFTR

On 3rd May 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Discussion Paper on draft RTS and ITS under the Securities Financing Transaction Regulation (SFTR).

ESMA amends MiFID II standards on non-equity transparency and position limits

On 2nd May 2016, the European Securities and Markets Authority (ESMA) issued two Opinions proposing amendments to its draft Regulatory Technical Standards (RTSs) under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR).

ESMA proposes to revise the RTS on non-equity transparency – which includes requirements in respect of bonds, structured finance products, emission allowances and derivatives – and the RTS on the methodology for the calculation and application of position limits for commodity derivatives. The Opinions were produced in response to proposed amendments by the European Commission to these draft RTSs.

Phase-in regime for non-equity transparency

MiFID II will extend transparency requirements to non-equity products, the implementation of which is detailed in ESMA's draft RTS. While overall supportive of the approach taken in the draft RTS, on 20 April 2016 the Commission requested ESMA to phase-in the application of certain parts of this new transparency regime to mitigate possible liquidity risks to bond markets. Under the phased-in approach, initially less demanding transparency requirements would be applied. These would be gradually strengthened over a period of four years until they reach the level of transparency initially proposed by ESMA. Consequently, significantly fewer instruments than initially proposed would be subject to the real-time transparency regime at the start of MiFID II.

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Under the Commission's proposal, the RTS would only specify the criteria applicable for the first stage of the phase-in and ESMA would conduct a yearly liquidity assessment. In the case of a favourable liquidity assessment, the transparency regime of the RTS would be strengthened by applying the regular legislative procedure for changing an RTS. Overall, ESMA supports the more cautious transparency regime as suggested by the Commission. However, ESMA proposes a different phase-in procedure. The Commission procedure for a regular RTS change risks to result in no meaningful improvement of transparency for many non-equity instruments, which would run contrary to the objective stated in MiFIR to strengthen transparency and improve the functioning of the internal market. In addition, it creates legal uncertainty and is burdensome for all parties involved. Therefore, ESMA is proposing an automatic phase-in, with all the stages already prescribed in the RTS. This automated phase-in would be accompanied by an annual liquidity assessment by ESMA and the RTS would be amended in case of significantly negative impacts on liquidity.

Finally, to ensure that also newly issued corporate and covered bonds are subject to a more cautious transparency regime, the ESMA Opinion proposes to adjust the liquidity status of newly issued corporate and covered bonds by increasing the issuance size thresholds.

RTS on position limits for commodity derivatives

MiFID II will introduce position limits, or caps on the number of commodity contracts that can be held, to commodity derivatives which will need to be set by national regulators. In order to ensure a harmonised approach to applying such limits, ESMA's draft RTS provides a methodology for calculating those limits on commodity derivatives traded on trading venues and economically equivalent OTC contracts. While overall supportive of the approach taken in the RTS, the European Commission asked ESMA to consider a number of amendments for:

- commodity derivatives with an agricultural underlying;
- the methodology in cases where deliverable supply and open interest of a contract differ significantly; and
- defining which contracts which are traded OTC only could be considered as economically equivalent to contracts traded on-venue.

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ESMA is supportive of most of the changes proposed by the Commission and understands the concerns about speculation and possible impacts on food prices. Therefore, ESMA proposes to lower the position limits for derivatives with foodstuffs as an underlying to 2.5%. In addition, ESMA suggests that in circumstances where deliverable supply and open interest diverge significantly, the other months' position limits should be adjusted accordingly. Finally, the definition of contracts traded "OTC only" has been slightly widened in order to prevent circumventions of the position limits regime by trading OTC.

In September 2015, ESMA submitted 28 draft RTSs under MiFID II/ MiFIR for endorsement to the Commission. On 20 April 2016, the Commission has asked ESMA to amend three RTSs, notably on non-equity transparency, position limits and ancillary activities. ESMA has sent today its two Opinions on non-equity transparency and position limits to the Commission which has to decide whether or not endorse the proposed changes. An Opinion on the third RTS on ancillary activities is currently being finalised by ESMA and will be issued later this month.

ESMA publishes responses to the Consultation on MAR Guidelines

On 27th April 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on draft guidelines on the Market Abuse Regulation (MAR).

ESMA announces Open Hearing on MAR Guidelines

On 20th April 2016, the European Securities and Markets Authority (ESMA) held an open hearing on its Consultation Paper published on 30 March 2016 on draft Guidelines to be issued by ESMA under the remit of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (MAR).

ESMA adds Credit Derivatives to its Public Register on EMIR

On 19th April 2016, the European Securities and Markets Authority (ESMA) published an update of its Public Register for the Clearing Obligation. Today's update concerns the addition of credit derivatives, notably for iTraxx main and iTraxx crossover contracts, to the clearing obligation. The public register lists the derivatives that have to be centrally cleared under the European Markets Infrastructure Regulation (EMIR). Credit derivatives will have to be centrally cleared following the publication

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of the relevant EMIR technical standard in the Official Journal of the European Union.

ESMA announces EU-wide stress tests for CCPs

On 14th April 2016, the European Securities and Markets Authority (ESMA) announced the publication of its first EU-wide stress test exercise regarding Central Counterparties (CCPs) on 29 April 2016.

ESMA is mandated to conduct stress tests of CCPs under the European Markets Infrastructure Regulation (EMIR). The stress test assesses the resilience and safety of the European CCP sector and aims to identify possible vulnerabilities.

Steven Maijoor, ESMA Chair, said:

"CCPs offer significant benefits to the market and play a key role in making derivatives markets safer. CCPs are also highly interconnected – both with financial institutions and markets – and the increasing volumes cleared through CCPs make them even more important for the financial system. Therefore, it is essential to test the sufficiency of their resources, not only individually but also at an EU- wide level. These stress tests are a crucial supervisory tool to ensure the sector is safe and resilient to shocks."

Scope of ESMA's CCP stress tests

ESMA, in cooperation with National Competent Authorities (NCAs) and the European Systemic Risk Board (ESRB), test the resilience of European CCPs by exposing them to adverse market scenarios. ESMA's stress test focuses on the counterparty credit risk that CCPs would face as a result of multiple clearing member (CM) defaults and simultaneous market price shocks.

ESMA issues opinions on DK pension schemes to be exempt from central clearing under EMIR

On 13th April 2016, the European Securities and Markets Authority (ESMA) issued a set of opinions regarding the exemption of 3 DK pension schemes from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant

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competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains opinions on 3 DK-based pension schemes where the Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by the Finanstilsynet, ESMA will update the list of the types of entities/ arrangements that have been exempted.

ESMA publishes Opinion on EU framework for loan origination by investment funds

On 12th April 2016, the European Securities and Markets Authority (ESMA) published an Opinion addressed to the European Parliament, the Council and the Commission on the components necessary for a common European framework which applies to loan origination by investment funds.

The Opinion, which forms part of ESMA's ongoing work on the Capital Markets Union, sets out ESMA's views on elements such as the authorisation of loan-originating funds and their managers, eligible investors, organisational requirements and leverage.

Loan origination means that an investment fund provides credit (originates a loan), acting as a sole or a primary lender, to borrowers such as small or medium enterprises (SMEs). As such, this activity represents an alternative form of market-based financing.

Several EU Member States have set up bespoke frameworks for loan origination by funds domiciled in their country which means that funds operating cross-border need to comply with different requirements. The European Commission therefore asked ESMA to provide input on the key issues in view of the establishment of a common EU approach.

ESMA publishes responses to the Consultation on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation

On 7th April 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation.

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ESMA Q&As on CFDs

On 8th April 2016, ESMA published Q&As on CFDs.

ESMA finds room for improvement in national supervision of investment advice to retail clients

On 7th April 2016, the European Securities and Markets Authority (ESMA) published a peer review on how national regulators assess compliance with MiFID's suitability requirements when firms provide investment advice to retail clients.

These requirements are designed to ensure that firms only recommend suitable investment products, based on the investor's profile.

Overall, ESMA found that while most national regulators have a good understanding of the investment advice market in their jurisdictions and regularly review the distribution methods and business models of investment firms, there is scope to adopt more proactive supervisory approaches and strengthen enforcement activities.

Steven Maijoor, ESMA Chair, said:

"The MiFID suitability requirements are a key component of Europe's investor protection framework and ESMA expects national competent authorities to be vigilant in ensuring firms comply with these important requirements.

"Supervisory convergence is high on ESMA's agenda, as we stated in our 2016-2020 strategy, and the findings from this review show the importance of this work."

Main findings

ESMA found that:

- National regulators have a good understanding of the types of distribution methods used in their jurisdictions and where the boundary between investment advice and information lies. However, limited supervision was performed to verify whether clients are receiving investment advice in practice or have the perception that they are receiving advice.

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- Most regulators do not perform supervision which is targeted at the particular behaviour of a firm or group of firms as part of a specific suitability project.
- Most regulators stated they used a wide range of tools to monitor the main aspects of advice suitability but only a limited number of regulators provided specific information on the tools they use to supervise compliance with the suitability requirements;
- Enforcement action, such as imposing fines or placing restrictions on firms' activities, was rarely taken. Many regulators considered their supervisory approach alone was sufficient to address issues; and
- In many cases, regulators could improve how they publicly communicate with stakeholders on their supervision and enforcement activities and findings.

Next steps

The findings of this peer review will help ESMA identify those areas where there is a need for further supervisory convergence among regulators.

ESAs finalise Key Information Documents for retail investors in the EU

On 7th April 2016, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) finalised its proposal for regulatory technical standards (RTS) on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

The proposed KIDs provide retail investors for the first time across the EU with simple and comparable information on investment products in the banking, insurance and securities sectors. A 3-page document increases the transparency and comparability of information about the risks, performance and costs of these products. The new rules will contribute to enhancing the confidence and strengthening the protection of EU consumers of banking, insurance and securities products.

Gabriel Bernardino, Chairman of EIOPA and current Chairman of the Joint Committee, said:

"*These new rules prepared jointly by the ESAs are a major step forward for consumers. They are an innovative and pioneering new approach to risk*,

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performance and cost disclosures that we believe lays a strong foundation for the future. Now, for the first time, consumers can easily compare different products and make informed investment decisions fitting their particular needs.

The ESAs reached a significant milestone in managing to transform high-level EU legislative principles into a set of practical cross-sectoral rules. On behalf of the Joint Committee, I would like to thank all the stakeholders for their extensive contributions throughout the entire process."

The new rules benefited from the public feedback received by the ESAs on two Discussion Papers and a Consultation Paper, from extensive consumer testing, which was facilitated by the European Commission across a sample of Member States, and from a consultative expert group.

The new rules address the content and presentation of the KIDs and include:

- a common mandatory 3-page template for the KID, covering the texts and layouts to be used (see Annexes I, III, V and VII of the Report);
- a summary risk indicator of seven classes for the risk and reward section of the KID;
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs;
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios;
- costs presentation, including the figures that must be calculated and the format to be used for these i.e. in both cash and percentage terms;
- specific layouts and contents for the KID for products offering multiple options that cannot effectively be covered in three pages;
- rules on revision and republication of the KID, to be done at least each year; and
- rules on providing the KID sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

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The new rules have been submitted to the European Commission for endorsement. They will come into force on the 31 December 2016.

ESMA publishes Discussion Paper on UCITS share classes

On 6th April 2016, the European Securities and Markets Authority (ESMA) published a discussion paper on UCITS share classes (the DP).

The Undertakings for Collective Investment in Transferable Securities (UCITS) Directive recognises the possibility for UCITS to offer different share classes to investors but it does not prescribe whether, and to what extent, share classes of a given UCITS can differ from one another. ESMA has identified diverging national practices in Europe regarding the types of share class that are permitted and therefore proposes establishing a common regulatory framework for share classes in the EU.

The DP describes the nature of share classes, the reasons for their existence and the key elements of share classes. It builds on the feedback received from ESMA's first discussion paper on this topic, published in December 2014, which proposed providing actual examples of share classes deemed compatible and non-compatible with the UCITS framework. In this DP, ESMA puts forward a revised, principles-based approach.

ESMA is seeking feedback from all stakeholders.

Next steps

The consultation closes on 6 June 2016. ESMA expects to take further steps on UCITS share classes by the end of 2016.

ESMA updates its Q&A document on prospectus related issues

On 6th April 2016, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues.

The Q&A includes two new questions and answers on the capitalisation and indebtedness table and the validity of the base prospectus.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 5th April 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD). The Q&A includes a new question and answer on notification requirements relating to additional investment in existing Alternative Investment Funds (AIFs).

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA publishes updated UCITS Q&A

On 5th April 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS). The Q&A includes a new question and answer on UCITS investment in UCITS feeder funds.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS and its implementing measures.

ESMA issues amended rules for access, aggregation and comparison of data across trade repositories

On 5th April 2016, the European Securities and Markets Authority (ESMA) published amended regulatory technical standards (RTS) implementing the European Market Infrastructure Regulation (EMIR).

The amended RTS deal with the access, aggregation and comparison of data across trade repositories.

In order to ensure higher quality of data and to enhance the access to data by authorities and allow for the comparability and aggregation of data across trade repositories, ESMA proposes the following amendments to its RTS:

- standardised output format of the TR data, based on international ISO standards, allowing comparison and aggregation across TRs;
- minimum types of queries that need to be available for the authorities;

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- standardised and secure data exchange, based on ISO standards, between TRs and authorities;
- standardised frequencies for the provision of direct and immediate access to TR data; and
- use of secure machine-to-machine connection and of data encryption protocols.

ESMA is aligning the implementation date of the amended RTS with the implementation date of the amended reporting rules under Article 9 EMIR which were submitted to the EC on 13 November 2015.

EMIR: ESMA proposes one-day margin period of risk for CCP client accounts

On 5th April 2016, the European Securities and Markets Authority (ESMA) sent its amended regulatory technical standards (RTS) under the European Market Infrastructure Regulation (EMIR) for endorsement to the European Commission. The RTS detail the margin period of risk (MPOR) for CCP client accounts, e.g. the amount of initial margins collected by a CCP. The amended RTS would allow EU-based CCPs to margin on a one-day MPOR basis.

The amended draft RTS reduces from two-day to one-day the MPOR for gross omnibus accounts and individual segregated accounts for exchange traded derivatives and securities. Following the US equivalence decision by the European Commission, the amended RTS would provide a level playing field between European and US CCPs of one-day MPOR. The client account structures together with the conditions that they need to respect for the CCPs to margin on a one-day MPOR basis ensure a sufficient level of protection to the CCPs and a greater protection for clients.

MiFID II – ESMA: no need to temporarily exclude ETDs from open access to trading venues and CCPs

On 4th April 2016, the European Securities and Markets Authority (ESMA) saw no need to temporarily exclude exchange-traded derivatives (ETDs) from non-discriminatory access to central counterparties (CCPs) and trading venues, which will be introduced by the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). MiFIR requires ESMA to assess whether ETDs should be exempted for a period of 30 months from the non-discriminatory access provisions.

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ESMA's analysis found that open access to ETDs does not create undue risks to the overall stability and orderly functioning of European financial markets. As potential risks relating to open access are already addressed by the legislative frameworks of MiFID II, MiFIR and EMIR – the European Markets Infrastructure Regulation – ESMA proposed to the European Parliament and Council not to introduce an ETD specific phase-in regarding the access provisions of MiFID II.

Steven Maijoor, ESMA Chair, stated:

"Trading venues and CCPs are important market infrastructures and crucial for well-functioning EU capital markets. Strengthening competition and choice between venues and CCPs is an important step to further the integration of the EU's capital markets. The open access provisions of MiFID II will help to achieve these goals for all instruments without creating undue risks to stability."

MiFIR introduces a regime for open and non-discriminatory access to CCPs and trading venues. These provisions cover:

- transferable securities;
- money market instruments; and
- ETDs.

This means that trading venues can clear their trades at the CCP of their choice and CCPs can access trade feeds from trading venues. Trading venues and CCPs may, however, deny access under certain circumstances as well as National Competent Authorities (NCAs) may refuse access to a particular CCP or trading venue. This is the case where granting such access would require an interoperability agreement for ETDs, or threaten the smooth and orderly functioning of the market – in particular due to liquidity fragmentation – or affect systemic risk.

In September 2015, ESMA has already submitted draft regulatory technical standards to the Commission further specifying the conditions under which access may be denied, the conditions under which access must be permitted and the conditions under which access will threaten the smooth and orderly functioning of the market.

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ESMA updates its EMIR Q&A

On 4th April 2016, the European Securities and Markets Authority (ESMA) published an update of its Questions and Answers (Q&A) document regarding the implementation of the European Market Infrastructure Regulation (EMIR).

The updated document includes a new Q&A regarding the population of the "Clearing obligation" field in the trade reports. In particular, this Q&A explains how the description of the field should be interpreted, how it should be populated during the frontloading period and how long the counterparties are allowed to report value "X" (standing for "not available").

ESMA publishes updated Q&A on the Market Abuse Directive "MAD"

On 1st April 2016, the European Securities and Markets Authority (ESMA) published an updated Questions and Answers (Q&A) on the common operation of the Market Abuse Directive "MAD".

The purpose of this document is to promote convergent implementation and application of the market abuse regime by providing responses to specific issues raised by the general public, market participants or competent authorities. The content of this document is aimed at competent authorities to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on existing market abuse requirements, rather than creating an extra layer of requirements.

ESMA publishes UCITS remuneration guidelines

On 31st March 2016, the European Securities and Markets Authority (ESMA) published its final Guidelines on sound remuneration policies under the UCITS Directive and AIFMD. ESMA has also written to the European Commission, European Council and European Parliament on the proportionality principle and remuneration rules in the financial sector.

ESMA consults on future MAR list of information regarding commodity and spot markets

On 30th March 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft guidelines under the Market Abuse Regulation (MAR).

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ESMA is seeking views on its proposed non-exhaustive indicative list of information expected or required to be published on commodity derivatives markets or spot markets for the purposes of determining inside information regarding commodity derivatives and of triggering the prohibitions for insider dealing.

Under MAR, inside information in relation to commodity derivatives must relate to either the commodity derivatives themselves or to the related spot commodity contract. However, there is a wide variety of commodities markets and commodity derivatives markets which may require distinguishing between types of information specific to these markets. Therefore, ESMA is giving further consideration to the scope of the instruments or products concerned.

ESMA will consider all comments received by 20 May 2016.

European Banking Authority (EBA)

ESMA Guidelines and Recommendations

EBA – consultation on asset encumbrance under CRR

On 13 May 2016, the European Banking Authority (EBA) launched a consultation on draft Regulatory Technical Standards (RTS) on the disclosure of encumbered and unencumbered assets for the provision of transparent and harmonised information on the topic, as laid down in the Capital Requirements Regulation (CRR). These draft RTS, which build on the EBA Guidelines on the same topic, detail the disclosure requirements and provide additional information. The consultation runs until 25 July 2016.

EBA consults on draft amending standards on CVA proxy spread

On 6th April 2016, the European Banking Authority (EBA) launched a public consultation on draft amending Regulatory Technical Standards (RTS) on credit valuation adjustment (CVA) proxy spread.

The Consultation will run until 6 July 2016.

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Markets Update

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Markets Update Issue 4 2016

Welcome to Issue 4 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

Securities Markets Regulation

Market Abuse Regulation

Applicable from 3 July 2016.

The new Market Abuse Regime, which consists of the Market Abuse Regulation and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU or 'CSMAD' or 'MAD II') became applicable in Ireland and across the European Union on 3 July 2016. The new regime replaces the previous Market Abuse Directive.

In Ireland, the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016)(2016 Regulations) is the Irish statutory instrument transposing CSMAD (and elements of MAR including the delegated acts) into Irish law. It replaces the previous Market Abuse (Directive 2003/6/EC) Regulations (S.I. 342 of 2005).

The Central Bank of Ireland is the single administrative competent authority for the purposes of Irish market abuse law, as provided under the

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2016 Regulations. The Securities and Markets Supervision Division of the Central Bank of Ireland is responsible for the competent authority functions arising from MAR, CSMAD and the 2016 Regulations.

The Central Bank of Ireland has issued revised Market Abuse Rules and Guidance on "Market Abuse Regulatory Framework, updated to align with MAR and the implementation of the new Market Abuse Regime.

The introduction of MAR and CSMAD forms part of the European regulatory reform agenda for financial services, aimed at ensuring greater transparency and market integrity.

The new Market Abuse Regime strengthens the legal framework underpinning the function of detecting, sanctioning and deterring markets. It extends its scope to apply to new markets, new trading platforms and new behaviours and to cover a broader range of financial instruments. It contains prohibitions for insider dealing, market manipulation and unlawful disclosure of inside information and provisions to prevent and detect these.

MAR introduces a number of changes including a broadening of the scope of legislation to include trading platforms, such as Multilateral Trading Facilities (MTFs), and Over the Counter (OTC) trades, including in derivatives. Other changes include additional notification requirements in relation to suspicious activity, delay in the disclosure of inside information, managers' transactions and enhanced requirements regarding the preparation and maintenance of insider lists and the handling of inside information.

The Market Abuse Directive introduces minimum rules for criminal sanctions for market abuse and widens the range of activities which constitute an offence, to include, for example, inciting, aiding and abetting the commission of certain market abuse offences.

Central Bank Consultation Papers of Interest

CP100: Consultation of Risk Assessment and Capital Planning for Fund Administrators

The Central Bank has today, 4 July 2016, published its feedback statement on CP100 Consultation on Risk Assessment and Capital Planning for Fund. This summarises the responses received along with the Central Bank's comments and decisions

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CP101: Consultation on a Capital Requirement Framework for Market Operators

The Central Bank has today, 4 July 2016, published its feedback statement on CP101 Consultation on a Capital Requirement Framework for Market Operators. This summarises the responses received along with the Central Bank's comments and decisions.

European Securities and Markets Authority (ESMA)

Securities Markets

ESMA Guidelines on Alternative Performance Measures effective 3 July 2016

The ESMA Guidelines on Alternative Performance Measures (the "APM Guidelines") (Reference: ESMA/2015/1415) which apply to alternative performance measures ("APMs") disclosed by issuers or persons responsible for the prospectus when publishing regulated information or prospectuses came into effect on 3 July 2016.

For the purpose of the APM Guidelines an APM is understood as a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework. The APM Guidelines are aimed at promoting the usefulness and transparency of APMs included in prospectuses or regulated information. Regulated information means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under the Transparency Directive, under the Market Abuse Regulation, or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive. Examples of regulated information include management reports disclosed to the market in accordance with the Transparency Directive and disclosures issued under the requirements of article 17 of the Market Abuse Regulation, such as ad-hoc disclosures including financial earnings results.

Adherence to the APM Guidelines will improve the comparability, reliability and/or comprehensibility of APMs. The Central Bank of Ireland

has incorporated the APM Guidelines into its supervisory practices and expects issuers or persons responsible for the prospectus to comply with them.

ESMA Guidelines and Recommendations

ESMA appoints new Securities and Markets Stakeholder Group

On 1 July 2016, the European Securities and Markets Authority (ESMA) published the new list of members of its Securities and Markets Stakeholder Group (SMSG) following its approval by its Board of Supervisors. The selected individuals begin a 2½ year term on 1 July 2016 and will replace the group whose mandate expired on 30 June 2016.

The new SMSG will be composed of 30 individuals drawn from across 13 Member States and representing ESMA's key stakeholder constituencies – financial market participants (10), employee representatives (2), consumer representatives (6), users of financial services (3), small and medium sized enterprises (2) and academics (7). The new SMSG will feature 27 new members. A number of the incoming members have served in the previous SMSG. The SMSG was established according to ESMA's founding regulation and facilitates consultation between ESMA and its key financial market stakeholders on its work. The SMSG provides ESMA with opinions and advice on its policy work and must be consulted on technical standards and guidelines and recommendations. Additionally, it can inform ESMA of any inconsistent application of European Union law as well as inconsistent supervisory practices in Member States.

ESMA publishes responses received to its consultation on Guidelines on CSDR

On 1 July 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on Guidelines on participant default rules and procedures under CSDR.

European Supervisory Authorities plan to issue Q&As on PRIIPS

On 1 July 2016, the Joint Committee of the three European Supervisory Authorities (ESAs) – EBA, EIOPA and ESMA – published a letter to the European Parliament and European Council on the supervisory

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convergence work by the ESAs in relation to the draft regulatory technical standards on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

ESMA – peer review on securities regulators' approval of prospectuses

On 30 June 2016, the European Securities and Markets Authority (ESMA) published a peer review on the efficiency and effectiveness of EU national securities markets regulators' approval of prospectuses, the disclosure documents prepared by issuers when they want to market their securities to EU investors. Overall, ESMA found that, while national regulators were in general sufficiently resourced and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

ESMA issues opinions on Danish pension scheme to be exempt from central clearing under EMIR

On 30 June 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains an opinion on one pension scheme where the Danish Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by Finanstilsynet, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA identifies scope for greater EU harmonisation in prospectuses approval

On 30 June 2016, the European Securities and Markets Authority (ESMA) published a peer review on the efficiency and effectiveness of

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European Union (EU) national securities markets regulators' approval of prospectuses, the disclosure documents prepared by issuers when they want to market their securities to EU investors.

Overall, ESMA found that, while national regulators were in general sufficiently resourced and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

Steven Maijoor, ESMA Chair, said:

"The Prospectus Directive is an important pillar of the single financial market: it helps firms access capital markets across the EU by setting a common format and content for prospectuses and introducing an EU-wide passport.

ESMA has assessed how the EU's single rulebook on prospectuses is applied in practice by national regulators as part of our supervisory convergence work. The findings of this peer review will help us identify practices which could benefit from further harmonisation to help deliver a truly single market."

Main findings

ESMA's review covered a two-year period from January 2013 to December 2014. The main findings were:

- Prospectuses are often complex and may therefore be difficult for investors to understand, according to external stakeholders interviewed by ESMA. Main concerns include their length, the format of the summary section, and the amount and manner in which information is incorporated by reference;
- National regulators have different interpretations of certain disclosure requirements which would benefit from further harmonisation, as would the way in which national regulators look at risk factors associated with issuers and their securities;
- Approval times vary substantially among national regulators, however, the driving factors largely fall outside national regulators' responsibilities and include:

    - quality of the first draft they receive;

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- issuers' response times to queries;
- the quality of those responses; and
- the complexity of issuers' circumstances.

Nevertheless, ESMA also identified scope for further improving the efficiency of regulators' approval procedures; and

The seasonal nature of prospectus approvals raised some concerns that national regulators could struggle to handle high volumes of documents while maintaining rigorous scrutiny during peak periods.

Next steps

The findings of this peer review will feed into ESMA's supervisory convergence work which is one of its main priorities for 2016-2020. ESMA intends to take a closer look, among other things, at the intelligibility of prospectuses, the disclosure of risk factors and the interpretation of certain requirements.

The EU's Prospectus Directive and Regulation is currently being revised as part of the European Commission's Capital Markets Union and may address some of the legislative clarifications identified during the peer review as appropriate.

ESMA publishes the responses to its Discussion Paper on UCITS share classes

On 23 June 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Discussion Paper on UCITS share classes.

ESMA issues Opinion on inside information disclosure under the Market Abuse Regulation

On 17 June 2016, the European Securities and Markets Authority (ESMA) issued an Opinion in response to a notification by the European Commission about intended changes on a draft Implementing Technical Standard (ITS) on the disclosure of inside information under the Market Abuse Regulation.

The ITS specify the technical means for disclosure of inside information by issuers of financial instruments and emission allowance market participants (EAMP) and require that information is explicitly marked as inside

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information and actively disseminated to the media. The Commission proposes that for EAMPs who are also subject to disclosure obligations under the Regulation on Energy Markets Integrity and Transparency (REMIT), compliance with REMIT's disclosure requirements is sufficient for disclosing inside information under MAR.

In its Opinion, ESMA does not agree with the amendments proposed by the Commission. ESMA considers that the two requirements that the Commission is intending to eliminate (the marking and dissemination of inside information) while reducing slightly the costs of the disclosing companies, would put investors at a disadvantage.

ESMA updates list of recognised third-country CCPs

On 14 June 2016, the European Securities and Markets Authority (ESMA) updated its list of recognised central counterparties (CCPs) based in third countries. Today's update concerns the recognition of the US Chicago Mercantile Exchange Inc. (CME).

The European Markets Infrastructure Regulation (EMIR) requires third-country CCPs to be recognised by ESMA in order to operate in the European Union.

ESMA issues Technical Standards for European Long-Term Investment Funds

On 8 June 2016, the European Securities and Markets Authority (ESMA) published its Final Report and draft Regulatory Technical Standards (RTS) for Regulation (EU) 2015/760, the European Long-Term Investment Fund Regulation (ELTIF).

The ELTIF Regulation allows investors to put money into companies and infrastructure projects for the long term and aims to increase the amount of non-bank finance available for companies investing in the EU's real economy. An ELTIF is a type of Alternative Investment Fund (AIF) which must be managed by an authorised AIF Manager under the AIFM Directive. By complying with the additional ELTIF requirements, the fund managers will have access to investors across the EU, including retail investors (subject to specific conditions).

ESMA's key proposals include:

- The criteria to determine the circumstances in which financial derivatives are used solely for hedging purposes, based on those set

out in the 'CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS on risk measurements';

- The life of an ELTIF should be determined with reference to the individual asset within the ELTIF portfolio which has the longest investment horizon;
- A non-exhaustive list of the types of market risk ELTIF managers should take into account when assessing the market for potential buyers ahead of the disposal of their asset;
- The criteria for the valuation of the ELTIF assets ahead of their divestment which specify the timing of the valuation and allow for valuations made under the AIFM to be taken into account; and
- A grandfathering provision, whereby ELTIFs have one year after the RTS come into force to comply with these rules.

Following discussion with the European Commission ESMA is postponing the delivery of its ELTIF RTS on the cost disclosure information which must be included in the ELTIF's prospectus, in order to take into account the work being undertaken on cost disclosures for PRIIPs.

ESMA and CFTC to cooperate on CCPs

On 6 June 2016, the European Securities and Markets Authority (ESMA) and the US Commodity Futures Trading Commission (CFTC) established a memorandum of understanding (MoU) under the European Markets Infrastructure Regulation (EMIR).

The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs which are established in US and authorised or recognised by the CFTC and which have applied for EU recognition under EMIR.

EMIR provides for cooperation arrangements between ESMA and the relevant non-EU authorities whose legal and supervisory framework for CCPs have been deemed equivalent to EMIR by the European Commission.

The MoU is effective as of 02 June 2016.

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ESMA updates its EMIR Q&A

On 6 June 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes new answers in relation to the clearing obligation, specifically about the self-categorisation that is necessary in order to establish which counterparties belong to which categories. The Q&A also provides clarifications on how counterparties should handle the situation where some of their counterparties have not provided the information on the category they belong to.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA publishes updated AIFMD Q&A

On 3 June 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes a new question and answer on requirements regarding the domicile of EU Alternative Investment Funds (AIFs) which are marketed in the home Member State of the AIF Manager, as well as a new question and answer relating to the marketing of EU feeder AIFs which have a non-EU master AIF. The Q&A also contains two new questions and answers regarding the influence that committed capital can have on the calculation of the total value of assets under management and additional own funds.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

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International Organization of Securities Commissions (IOSCO)

IOSCO Outlines its Priorities Regarding Data Gaps in the Asset Management Industry

On 22nd June 2016, the Board of the International Organization of Securities Commissions (IOSCO) issued a public statement outlining its priorities regarding data gaps in the asset management industry.

Implementation monitoring of the PFMI: Third update to level 1 assessment report

On 28th June 2016, the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published the third update to the level 1 assessments of implementation monitoring of the Principles for financial market infrastructures (PFMI).

CPMI-IOSCO release guidance on cyber resilience for financial market infrastructures

On 29th June 2016, the Committee on Payments and Market Infrastructures (CPMI) and the Board of the International Organization of Securities Commissions (IOSCO) released the final report Guidance on cyber resilience for financial market infrastructures ("Cyber Guidance"). This Cyber Guidance is the first internationally agreed guidance on cyber security for the financial industry. It has been developed against the backdrop of a rising number of cyber-attacks against the financial sector and in a context where attacks are becoming increasingly sophisticated.

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Markets Update

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Markets Update Issue 5 2016

Welcome to Issue 5 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

UCITS

UCITS Q&A - Fourteenth Edition Published

On 12 September 2016, the Central Bank published a fourteenth Edition of the UCITS Q&A. The new questions added are: ID 1067 – ID 1069 (Umbrella cash accounts) and ID 1070 – ID 1072 (Accounts).

AIFMD

AIFMD Q&A - Twentieth Edition Published

On 12 September 2016, the Central Bank published a twentieth edition of the AIFMD Q&A. The new questions added are: ID1108 – ID 1110 (Umbrella cash accounts).

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Securities Markets

First Edition of Market Abuse Regulatory Framework Q&A

The Market Abuse Regulatory Framework Q&A sets out answers to queries that may arise in relation to the Market Abuse Regime which became applicable in Ireland on 3 July 2016. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered.

On 12 September 2016, the Central Bank published the First Edition of the **Market Abuse Regulatory Framework Q&A.** The questions included are:

- ID 1001 (PDMRs and PCAs use the relevant issuer's ONR account in order to notify the Central Bank of transactions under Article 19 of MAR);
- ID 1002 (multiple issuers and ONR accounts);
- ID 1003 (delegation of application of access to the ONR);
- ID 1004 (delegation lf notification requirements); and
- ID 1005 (notifications and threshold specifications)

Prospectus Regulations – New Final Terms Submission Process

The Central Bank anticipates that its new Final Terms submission process will commence on 20 September 2016. Confirmation of this being the implementation date will be communicated in advance of the process going live.

The new submission process will require the submission of Final Terms by means of a secure web based system, the Online Reporting System (ONR).

In order to submit Final Terms via ONR, log in access will be required which must be applied for in advance of the implementation date. To apply, please provide the following information to markets@centralbank.ie:

1) Name and Address of submitting entity;

2) Name and Job Title of Administrator User in the submitting entity i.e., person responsible for

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managing access to the ONR in the submitting entity;

3) Phone number and email address of Administrator User.

The Central Bank strongly encourages submitters of Final Terms to apply for log in access to ONR at their earliest convenience. Login name and password to access ONR will be provided in due course once this information is received and is in order.

Final Terms will not be able to be submitted without access to ONR and it is therefore the responsibility of issuers to ensure that they, or their agent, can submit Final Terms via ONR to avoid the possibility of being in breach of the Prospectus Regulations. If a submitter currently has an ONR login and an Administrator User, a new login will not be required. The Central Bank should be notified of the log in details and System Administrator and it will revert with details of when the "Final Terms Return" will be deployed for access on ONR. The Central Bank wishes to thank those who have applied for access to ONR; it will shortly be in touch in this regard.

Please note that on the commencement of the new Final Terms Submission Process via ONR expected on 20 September 2016, it will no longer be possible to submit Final Terms via email.

The Central Bank's Prospectus Handbook will be updated shortly to coincide with the change to the process for submission of final terms and some other minor technical changes.

The other minor changes include:

- amending references to regulations 30, 31 and 33 of the Prospectus Regulation (as these regulations were deleted by the Regulatory Technical Standards 2016/301 for approval and publication of prospectuses and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 and inserting a definition of the Regulatory Technical Standards 2016/301; and
- correcting some cross references and making other minor drafting changes.

Contact: markets@centralbank.ie or corporatefinancepolicy@centralbank.ie

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MiFID Firms

Department of Finance publishes Public Consultation on Transposition of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR)

On 6 July 2016 the Department of Finance published its Public Consultation on Transposition of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). The consultation period will run from 07 July to 21 September, a period of 11 weeks.

Funds

Central Bank of Ireland's Guidance on Directors' Time Commitments - Q & A

On 8 September the Central Bank issued a letter to all fund service providers and fund boards providing an update on the director time commitments thematic review. Extensive engagement with directors following the 2015 review has delivered significant progress in reducing concentrations of directorships. The industry letter highlights this and areas for directors to consider when reviewing their capacity to fulfil their directorship roles.

European Banking Authority (EBA)

Central Bank confirms compliance with EBA guidelines on sound remuneration policies

The Central Bank has confirmed compliance with the EBA guidelines on sound remuneration policies, in line with European and Irish law.

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European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA issues opinion on Danish pension scheme to be exempt from central clearing under EMIR

On 3 August 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Some pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains an opinion on one pension scheme where Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by Finanstilsynet, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA issues overview of European prospectus activity

On 28 July 2016, the European Securities and Markets Authority (ESMA) published statistical data on the number of prospectuses approved and passported by the National Competent Authorities (NCAs) of the European Economic Area (EEA) within the EU prospectus regime.

The report shows that the number of prospectus approvals across the EEA has slightly decreased in 2015 compared to 2014, continuing the overall decreasing trend since 2009 as a result of the impact of the financial crisis. Almost three quarters of prospectuses approved in 2015 related to non-equity securities, slightly more than half of which were drawn up as base prospectuses. Passporting activity was relatively stable between 2014 and

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2015 with ten countries accounting for the bulk of prospectuses passported across the EEA.

The prospectus report is published by ESMA on an annual basis and presenting prospectus activity from January to December 2015. The report also includes information about prospectus approval trends since 2006, content and structure of approved prospectuses and prospectus passporting activity.

ESMA updates its EMIR Q&A

On 27 July 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes a new answer in relation to reporting of trades cleared by a clearing house which is not a CCP under the EMIR definition. The Q&A clarifies that such entities should not be identified in the "CCP ID" field of EMIR reports. Also, in the case of trades that are executed in an anonymised market and cleared by a clearing house, the counterparty executing the transaction should request the trading venue or the clearing house that matches the counterparties to disclose the identity of the other counterparty before the reporting deadline.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA finalises standards on sanctions and measures under MAR

On 26 July 2016, the European Securities and Markets Authority (ESMA) issued final implementing technical standards (ITS) regarding sanctions and measures which will implement the Market Abuse Regulation (MAR).

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The ITS prescribe how national competent authorities (NCAs) should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their Member States under MAR. The Regulation provides for two types of submission of information, which are as follows:

- NCAs shall provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR as well as regarding administrative and criminal investigations undertaken in accordance with those articles; and
- Administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.

The ESMA has submitted the final ITS for endorsement to the European Commission which is followed by a non-objections period by the European Parliament and Council respectively.

ESMA issues warning on sale of speculative products to retail investors

On 25 July 2016, the European Securities and Markets Authority (ESMA) issued a warning about the sale of contracts for differences (CFDs), binary options and other speculative products to retail investors who are unaware of the risks associated with these products, and also highlights the regulatory action taken in relation to several Cyprus-based investment firms.

The warning comes as ESMA and a number of national supervisors have observed an increase in the marketing of these products, often through aggressive practices, and at the same time, a rise in the number of complaints from retail investors who have suffered significant losses.

Steven Maijoor, ESMA Chair, said:

“ESMA and national regulators still have serious concerns that firms are selling these products, which are inherently risky and speculative, to people who do not understand them.

“These products are often advertised to the retail mass market via online platforms and sold without investment advice. When these products are marketed and sold in an aggressive manner or when firms otherwise fail to

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comply with their regulatory obligations, this creates the conditions for retail investors to suffer significant detriment, including unexpected losses.

"ESMA and national regulators are committed to working together to ensure investors receive proper protection across the EU."

Since mid-2015, ESMA has coordinated a group of national regulators focused on issues relating to a number of Cyprus-based investment firms that sell CFDs and binary options throughout Europe. The Cyprus Securities and Exchange Commission (CySEC) has imposed fines on, or reached settlement agreements with, eight firms - Depaho, Reliantco, IronFX Global, WGM Services, Pegase Capital, Rodeler, Banc de Binary and Ouroboros Derivatives Trading - totalling EUR 2,072,000. It has also suspended the license of Pegase Capital. CySEC's work is ongoing in this area.

ESMA is also promoting common supervisory approaches in relation to the sale of speculative products to retail investors so that the same standards are applied across the EU. It has recently published an updated Questions and Answers document which clarifies how rules relating to these products should be implemented. The latest update provides guidance on the information to be provided to clients and potential clients about speculative products, and the appropriateness assessment required when firms offer these products to retail clients.

ESMA publishes updated Q&A on CFDs and other speculative products

On 25 July 2016, the European Securities and Markets Authority (ESMA) published an updated version of its question and answer document (Q&A) to on the application of the Markets in Financial Instruments Directive (MiFID) to the marketing and sale of financial contracts for difference (CFDs) and other speculative products to retail clients (such as binary options and rolling spot forex).

The Q&A includes 9 new questions and answers in sections 3 to 5, which address the following topics:

- The information provided to clients and potential clients about how CFDs and other speculative products work and the risks involved, including marketing communications;

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- The assessment of a retail client or potential retail client's ability to understand the risks involved in order to determine whether trading in CFDs or other speculative products is appropriate for them; and
- Factors for supervisors to consider when firms offering CFDs or other speculative products to retail clients enter into certain commercial arrangements with other authorised firms.

The complexity of CFDs and other speculative products means it may be difficult for the majority of retail investors to understand the risks involved although they are widely advertised to the retail mass market by a number of firms, often via online platforms. There is also a considerable degree of cross-border activity across Europe in these products. Many incompetent authorities have concerns about the protection of investors in this area and the purpose of the Q&A is to promote common supervisory approaches and practices in the application of MiFID and its implementing measures to key aspects that are relevant when CFDs and other speculative products are sold to retail clients.

Next steps

ESMA will continue to work on this topic and aims to publish further Q&As in the coming months. ESMA will also consider the need for any further work, in the medium term, in light of MiFID II requirements.

ESMA publishes updated UCITS Q&A

On 19 July 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes one new question and answer on the impact of the European Market Infrastructure Regulation (EMIR) on the UCITS framework, regarding the valuation of centrally cleared OTC derivatives by UCITS management companies.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 19 July 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes one new question and answer on the impact of the European Market Infrastructure Regulation (EMIR) on the AIFMD framework, regarding the valuation of centrally cleared OTC derivatives by AIF managers.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA advises on extension of funds passport to 12 non-EU countries

On 19 July 2016, the European Securities and Markets Authority (ESMA) published its Advice in relation to the application of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds (AIFs) in twelve countries: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland, and the United States.

Currently, non-EU AIFMs and AIFs must comply with each EU country's national regime when they market funds in that country. ESMA's Advice relates to the possible extension of the passport, which is presently only available to EU entities, to non-EU AIFMs and AIFs so that they could market and manage funds throughout the EU.

For each country, ESMA assessed whether there were significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk which would impede the application of the AIFMD passport.

According to ESMA's advice:

- there are no significant obstacles impeding the application of the AIFMD passport to Canada, Guernsey, Japan, Jersey and Switzerland;

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- if ESMA considers the assessment only in relation to AIFs, there are no significant obstacles impeding the application of the AIFMD passport to AIFs in **Hong Kong** and **Singapore**. However, ESMA notes that both Hong Kong and Singapore operate regimes that facilitate the access of UCITS from only certain EU Member States to retail investors in their territories.
- there are no significant obstacles regarding market disruption and obstacles to competition impeding the application of the AIFMD passport to **Australia**, provided the Australian Securities and Investment Committee (ASIC) extends to all EU Member States the 'class order relief', currently available only to some EU Member States, from some requirements of the Australian regulatory framework;
- there were no significant obstacles regarding investor protection and the monitoring of systemic risk which would impede the application of the AIFMD passport to **the United States** (US). With respect to the competition and market disruption criteria, ESMA considers there is no significant obstacle for funds marketed by managers to professional investors which do not involve any public offering. However, ESMA considers that in the case of funds marketed by managers to professional investors which do involve a public offering, a potential extension of the AIFMD passport to the US risks an un-level playing field between EU and non-EU AIFMs. The market access conditions which would apply to these US funds in the EU under an AIFMD passport would be different from, and potentially less onerous than, the market access conditions applicable to EU funds in the US and marketed by managers involving a public offering. ESMA suggests, therefore, that the EU institutions consider options to mitigate this risk;
- For **Bermuda** and the **Cayman Islands,** ESMA cannot give definitive Advice with respect to the criteria on investor protection and effectiveness of enforcement since both countries are in the process of implementing new regulatory regimes and the assessment will need to take into account the final rules in place. For the **Isle of Man** ESMA finds that the absence of an AIFMD-like regime makes it difficult to assess whether the investor protection criterion is met.

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ESMA published its first set of Advice on the application of the passport to six non-EU countries (Guernsey, Hong Kong, Jersey, Switzerland, Singapore and the US) in July 2015. The European Commission (Commission) subsequently asked ESMA to assess a further six countries and to provide more details on the capacity of non-EU supervisory authorities and their track record in ensuring effective enforcement, including those non-EU countries which ESMA looked at in its first set of advice. The Commission also asked ESMA to provide data on the expected inflows of funds by type and size into the EU from the different non-EU countries.

This Advice, required under the AIFMD, will now be considered by the European Commission, Parliament and Council.

ESMA seeking commodity derivatives experts to join consultative industry group

On 18 July 2016, the European Securities and Markets Authority (ESMA) published a call for candidates to newly constitute a Consultative Working Group (CWG) for the ESMA Commodity Derivatives Task Force (CDTF) as the two-year-term of the existing CWG has recently expired.

The CWG is mainly expected to advise and assist the CDTF on technical standards such as guidelines, Q&As and other guidance in relation to relevant legislative provisions within the area of competence of the CDTF; and advise and assist the Task Force in assessing the potential impact of proposed technical standards and guidelines.

The CDTF undertakes ESMA's work relating to commodity financial markets. In terms of markets covered, the following ones form part of the work of the CDTF: energy (gas, oil, coal and electricity); metals; agricultural and soft commodities; and others, such as freight. In terms of products, the whole range of instruments, from traditional futures to exotic derivatives, are within the remit of the CDTF. It is responsible for preparing ESMA technical standards, opinions, guidelines, Q&As and other guidance related to the implementation of the MiFID II framework. The CDTF is also tasked with preparing advice to the European Commission and to other ESMA groups on commodity derivatives related matters.

Interested experts are asked to send their application to ESMA by 29 August 2016.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

ESMA consults on asset segregation and custody services under AIFMD and UCITS

On 15 July 2016, the European Securities and Markets Authority (ESMA) published a Call for Evidence on Asset Segregation and Custody Services under the Alternative Investment Fund Managers Directive (AIFMD) and the Directive on Undertakings for **Collective Investment in Transferable Securities (UCITS** Directive**).**

ESMA first consulted on asset segregation under the AIFMD in December 2014. However, given the majority of respondents objected to the two options on which ESMA consulted, coupled with the fact that the new UCITS V Directive has recently introduced asset segregation requirements which are broadly aligned to the AIFMD, ESMA has decided to carry out a further consultation. This call for evidence has a broader scope than the initial consultation as it also covers asset segregation rules under the UCITS Directive and any residual uncertainty on how the depositary delegation rules should apply to central securities depositaries.

ESMA is particularly interested in gathering views on any asset segregation regime which ensures assets are clearly identifiable as belonging to the AIF or UCITS, and which provides investors with robust protection by avoiding ownership of the assets being called into question in the event of insolvency.

The consultation closes on 23 September 2016.

In responding to this call for evidence, please follow the instructions given in the reply form document published with this CP.

ESMA updates its Q&A document on prospectus related issues

On 15 July 2016, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues. The Q&A included two new questions and answers on advertisements and Alternative Performance Measures.

The purpose of the Q&A document was to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

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ESMA updates its MAR Q&As

On 13 July 2016, the European Securities and Markets Authority (ESMA) updated its Questions & Answers (Q&As) regarding the implementation of the Market Abuse Regulation (MAR).

The updated Q&As include new answers regarding managers' transactions.

ESMA readies MAR guidelines on market soundings and delayed disclosure of inside information

On 13 July 2016, the European Securities and Markets Authority (ESMA) issued final guidelines clarifying the implementation of the Market Abuse Regulation (MAR) for persons receiving market soundings and on delayed disclosure of inside information.

The new market abuse regime strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviors. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

"Market sounding" are a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. ESMA's final guidelines detail:

- *the factors* that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
- *the steps* that such persons are to take if inside information has been disclosed to them; and
- *the records* that such persons are to maintain in order to demonstrate that they have complied with MAR.

On legitimate interests of issuers to delay disclosure of inside information and on situations in which the delay of disclosure is likely to mislead the public, ESMA's guidelines provide a non-exhaustive and indicative list of:

- legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information; and

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- situations in which delay of disclosure is likely to mislead the public.

Within two months of the issuance of the different language versions of these guidelines, national competent authority (NCA) will have to confirm whether or not they intend to comply with those Guidelines. In the event that a NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons.

ESMA consults on the validation and review of CRAs' methodologies guidelines

On 13 July 2016, the European Securities and Markets Authority (ESMA) published a Consultation Paper on guidelines on the validation and review of Credit Rating Agencies' (CRAs) methodologies (the CP).

The purpose of the draft guidelines was to clarify ESMA's expectations regarding how CRAs should validate and review their methodologies. ESMA aimed to achieve a consistent application of validation and review measures across CRAs through the demonstration of the discriminatory power, predictive power and historical robustness of their methodologies. The draft guidelines also identified the measures that CRAs should implement when validating and reviewing their methodologies with limited quantitative evidence.

The CP was accompanied by a Feedback Statement which outlined the main issues that were highlighted in response to the Discussion Paper on these guidelines published in December 2015. The initial proposals were not substantially altered and the consultation focused on the changes that have been made in response to the feedback received.

ESMA was seeking feedback from users of credit ratings and CRAs.

The consultation closed on 22 August 2016.

ESMA consults on proposed central clearing delay for small financial counterparties

On 13th July 2016, the European Securities and Markets Authority (ESMA) published a consultation paper proposing to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under the European Market Infrastructure Regulation (EMIR).

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ESMA proposed to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations.

The consultation closes on 5 September 2016 and ESMA will consider all received with a view to publishing a final report by the end of 2016.

ESMA publishes translations of its Guidelines on cross-selling practices

On 11th July 2016, the European Securities and Markets Authority (ESMA) published translations of its Guidelines on cross-selling practices. The purpose of these Guidelines was to ensure a common, uniform and consistent application of these definitions.

ESMA issues opinions on Swedish pension scheme to be exempt from central clearing under EMIR

On 7th July 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Swedish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Some pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

The document published by ESMA contained an opinion on one pension scheme where Finansinspektionen was the competent authority for securities markets. After the exemptions are granted by Finansinspektionen, ESMA published the list of the types of entities/ arrangements that have been exempted.

ESMA issues positive opinion on short selling ban by Italian CONSOB

On 6th July 2016, the European Securities and Markets Authority (ESMA) issued an agreeing to an emergency short selling prohibition, for a

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period of 90 calendar days, by the Commissione Nazionale per le Società e la Borsa (CONSOB) on net short positions in Banca Monte dei Pascha di Siena spa (BMPS) shares under the Short Selling Regulation.

The measure entered into force at 00:00:01 CEST on 7 July 2016 and will remain in place until 24:00:00 (CET) on 5 October 2016. It temporarily prohibits transactions in any shares, either directly or through related instruments and irrespectively of the venue or market in which the transactions leading to those positions are conducted. The measure does not apply to trading in index-related instruments.

The short selling measure applies to any natural or legal person, irrespective of their country of residence, and does not exempt market making activities.

ESMA considers that the current circumstances related to BMPS constitute adverse events or developments which constitute a serious threat to market confidence in Italy and that the proposed measure is appropriate and proportionate to address the threat to Italian financial markets.

International Organization of Securities Commission (IOSCO)

IOSCO Good Practice for CIS Fees and Expenses seeks to enhance market efficiency

On 25th August 2016, the Board of the International Organization of Securities Commission published the final report on Good Practice for Fees and Expenses of Collective Investment Schemes (CIS), which aims to identify common international examples of good practice that can be applied to CIS fees and expenses.

IOSCO consults on good practices for the termination of investment funds in an effort to increase investor protection

On 18th August 2016, The Board of the International Organization of Securities Commission published a consultation report on Good Practices for the Termination of Investment Funds, which proposes a set of good practices on the voluntary termination process for investment funds.

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Reports from CPMI-IOSCO advance regulatory agenda on central counterparties

On 16th August 2016, the Committee on Payments and Market Infrastructures (CPMI) and the Board of International Organization of Securities Commissions (IOSCO) published reports that were aimed at enhancing the resilience of central counterparties (CCPs), an important movement towards completing the regulatory agenda for central clearing laid out after the financial crisis.

European Banking Authority (EBA)

MiFID Firms

EBA provides input based on the Single Rulebook Q&As to the European Commission's CRR-CRD review

On 5 August 2016, the European Banking Authority (EBA) published the outcome of a review of its Single Rulebook Q&As, which provides an overview of possible errors, inconsistencies as well as fundamental issues in relation to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD) observed via the Single Rulebook Q&A tool managed by the EBA.

The input provided to the Commission includes both a general assessment as well as more specific findings, which are further detailed in twelve annexes grouped by topics of the CRR-CRD texts covered in the legislative review.

The EBA will use the outcome of its review to continue its technical discussions and collaboration with the EU Commission services in the context of the CRR/CRD review.

EBA launches data collection to support the new prudential framework for investment firms

On 15 July 2016, the European Banking Authority (EBA) launched a data collection aimed at supporting the response to the European Commission's Call for Advice on a new prudential framework for MiFID (Markets in

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Financial Instruments Directive) investment firms, which should be less complex, more risk sensitive and more proportionate than the current regime.

For the purpose of this data collection, the EBA published templates and instructions which are addressed to MiFID investment firms and to UCITS/AIFMD (Undertakings for Collective Investment in Transferable Securities/Alternative Investment Fund Managers Directive) firms that conduct MiFID activities or services. The templates should be filled in and submitted to the respective Competent Authorities by Friday, 7 October 2016 at the latest.

This data collection follows the Call for Advice received from the European Commission on 13 June 2016 and also addresses its request regarding the application of proportionality in the area of remuneration.

The EBA will launch an ad-hoc data collection for commodity dealers at a later stage.

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Banc Ceannais na hÉireann
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Markets Update Issue 6 2016

Welcome to Issue 6 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

Securities Markets

Updated Transparency Rules

The Central Bank's Transparency Rules were updated effective 4 November 2016. The Transparency Rules set out procedural and administrative rules and guidance in respect of the Transparency (Directive 2004/109/EC) Regulations 2007 as amended.

The changes made are to further reflect the transposition of Directive 2013/50/EU. The Rules no longer provide exemptions from the requirement to notify issuers of significant share-holdings arising through stock-lending or stock-borrowing agreements.

Contact: corporatefinancepollicy@centralbank.ie

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MiFID Firms

EBA seeks views on a new prudential regime for investment firms

On 4 November 2016 the EBA launched a consultation on the design of a new prudential regime for investment firms, which is specifically tailored to investment firms' different business models and inherent risks. This consultation will assist in developing a response to the European Commission's call for technical from the EBA, issued on 13 June 2016, on appropriate prudential requirements for investment firms. The aim of this work is to develop a single, harmonised set of requirements that are reasonably simple, proportionate and more relevant to the nature of investment business than the current regime. The consultation runs until 2 February 2017 and is addressed to all investment firms that are not systemic and bank-like.

The EBA recommends a framework focused on the risks that investment firms pose to customers and to market integrity. The EBA is proposing that the ongoing capital requirements shall be calculated based on capital factors (K-factors) that are attributed to one of these two broad types of risks. As a result, firms that pose more risk to customers and markets should get higher capital requirements than those who pose less risk, and firms that pose similar risk to customers and markets but with more own exposure risk should hold more capital than those with less own exposure risk.

The Discussion Paper covers the most important aspects related to the new prudential requirements for investment firms, including three possible alternatives to set minimum liquidity requirements. All three alternatives aim at addressing the liquidity profile of investment firms in a more appropriate way than the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) set out under the CRR regime.

EBA recommends that only investment firms identified as GSIIs and OSIIs be subject to the full CRDIV/CRR

On 20 October 2016 the EBA responded to the European Commission's call for technical advice, issued on 13 June 2016, on the criteria to identify the categories of investment firms for which the prudential regime laid down in the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) is appropriate. In general, the EBA

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recommends that only those investment firms that are systemic and bank-like should remain subject to the full CRD/CRR regime and recommends that systemic and bank-like investment firms are identified as Global Systemically Important Institutions (GSIIs) and Other Systemically Important Institutions (OSIIs).

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID

On 11 October 2016, ESMA published a Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID and its implementing measures to certain key aspects that are relevant when CFDs and other speculative products are marketed and sold to retail clients.

ESMA Final Report on Guidelines on transaction reporting, order record keeping and clock synchronization under MiFID II

On 10 October 2016, ESMA published a Final Report on Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II. The Guidelines aim to provide guidance on how to fill transaction reports and comply with record keeping or clock synchronisation obligations. This document also contains the summary of responses received to the Consultation Paper issued in December 2015. As per the ESMA website, it should be noted that the regulatory technical standard (RTS) on the reporting of transactions to competent authorities is still under the scrutiny of the European Parliament and Council, thus the publication by ESMA of the Guidelines is without prejudice to the possible objection to that RTS.

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ESMA Q&A on MiFID II and MiFIR investor protection topics

On 10 October 2016, ESMA published a Q&A on MiFID II and MiFIR investor protection topics. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to investor protection topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

ESMA Consultation Paper on Guidelines on the calibration, publication and reporting of trading halts

On 6 October 2016, ESMA published a Consultation Paper on Guidelines on the calibration, publication and reporting of trading halts. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 6 December 2016. This Consultation Paper may be specifically of interest to trading venues, firms considering becoming data reporting services providers, investment firms, as well as wholesale and retail investors.

ESMA Consultation Paper on draft guidelines on MiFID II product governance requirements

On 5 October 2016, ESMA published a Consultation Paper on Draft guidelines on MiFID II product governance requirements. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 5 January 2017. This paper is addressed to investment firms and credit institutions performing investment services and activities and their staff, especially firms which manufacture financial instruments or structured deposits for sale to clients as well as the firms which distribute them.

ESMA Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments

On 3 October 2016, ESMA published a Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 5 December 2016. This Consultation

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Paper may be of particular interest for potential consolidated tape providers (CTPs), potential users of CTPs as well as trading venues and approved publication arrangements.

ESMA Q&A on the implementation of the double volume cap under MiFID II

On 3 October 2016, ESMA published Q&As on the implementation of the double volume cap under MiFID II. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to transparency topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

ESMA Discussion Paper on the trading obligation for derivatives under MiFIR

On 20 September 2016, ESMA published a Discussion Paper on the trading obligation for derivatives under MIFIR. ESMA invited comments on all matters in the paper and in particular on the specific questions summarised in the Annex. ESMA will consider all comments received by 21 November 2016. Responses are sought from trading venues and from counterparties trading OTC derivatives that may become subject to the trading obligation.

European Banking Authority (EBA)

MiFID Firms

EBA Consultation on Guidelines on internal governance (revised)

On 28th October 2016, the European Banking Authority (EBA) launched today a public consultation on its revised Guidelines on internal governance. These draft Guidelines aim at further harmonising institutions' internal governance arrangements, processes and mechanisms across the EU, in line with the new requirements in this area introduced in the Capital Requirements Directive (CRD) and also taking into account the proportionality principle. The consultation runs until 28 January 2017.

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EBA Consultation on Joint ESMA EBA Guidelines on suitability of management body

On 28th October 2016, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) launched a consultation on Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders (the Guidelines). The draft Guidelines aim at further improving and harmonising suitability assessments within the EU financial sectors and so ensure sound governance arrangements in financial institutions.

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Central Bank of Ireland

MiFID Firms

Central Bank published its Feedback Statement in relation to Consultation Paper CP 97 - Consultation on Central Bank Investment Firms Regulation 2015

On 25 November 2016, the Central Bank published its Feedback Statement in relation to Consultation Paper CP 97 - Consultation on Central Bank Investment Firms Regulations 2015. The Central Bank Investment Firms Regulations will consolidate into one document the conditions and requirements which the Central Bank imposes on certain investment firms. The CP 97 Feedback Statement outlines the various representations made in response to CP97 and the Central Bank's intended policy approach in respect of those matters. The Central Bank intends to publish the Investment Firm Regulations and related Guidance in early 2017.

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AIFMD

Central Bank published a notice of intention to amend the requirements for loan origination Qualifying AIF

On 25 November 2016, the Central Bank published a notice of intention to amend the requirements for loan origination Qualifying AIF set out in the AIF Rulebook. The change outlined therein will come into effect from 3 January 2017 when the Central Bank will publish a revised AIF Rulebook.

AIFMD Q&A - Twenty-First Edition Published

On 25 November 2016, the Central Bank published the twenty-first edition of the AIFMD Q&A. A new question ID 1111 relating to pension scheme arrangements under EMIR is included.

Securities Markets

The Central Bank publishes the First Edition of a Transparency Regulatory Framework Q&A

On 25 November 2016, the Central Bank published the First Edition to of the Transparency Regulated Framework Q&A.

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Central Bank Consultation Papers of Interest

CP106: Consultation Paper on the Review of Minimum Competency Code 2011

The Central Bank published a Consultation Paper on the Review of the Minimum Competency Code 2011 (CP106) on 21 November 2016. Some of the proposed changes to the minimum competency standards incorporate knowledge and competence requirements set out in the ESMA Guidelines for the assessment of knowledge and competence.

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Speeches to Markets Industry

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Address by Martin Moloney, Head of Markets Policy, Central Bank of Ireland at the IOSCO-FSI Seminar on Trading Book Issues and Market Infrastructure in Madrid.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA publishes updated UCITS Q&A

On 21 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes two new questions and answers on how investment limits should be applied where a UCITS wants to invest in an umbrella fund.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures.

ESMA publishes MiFID II Q&As on transparency and market structure topics

On 18 November 2016, the European Securities and Markets Authority (ESMA) published two Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR).

ESMA has published a new Q&A document on market structures which provides clarifications on the two following topics:

- data disaggregation; and,

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- the mandatory tick size regime.

ESMA has also updated its Q&A on transparency with two new questions which provide details regarding:

- article 4(7) of MiFIR, review of waivers granted in accordance with MiFID I; and,
- the procedure for granting a waiver from pre-trade transparency obligations for illiquid non-equity financial instruments.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of MiFID II/MiFIR and its implementing measures.

ESMA Chair says safeguarding investors is key to Capital Markets Union's success

On 17 November 2016, the European Securities and Markets Authority (ESMA) Chair, Steven Maijoor, gave a speech entitled "Safeguarding investors is key to ensuring the Capital Markets Union's success" at the Börse Stuttgart MiFID-Kongress, Germany.

ESMA Chair speaks on improving outcomes for investors in investment funds

On 17 November 2016, the European Securities and Markets Authority (ESMA) Chair, Steven Maijoor, gave a speech entitled "Safeguarding investors is key to ensuring the Capital Markets Union's success" at the Börse Stuttgart MiFID-Kongress, Germany.

ESMA responds to Commission's consultation on potential EU personal pension framework

On 16 November 2016, the European Securities and Markets Authority (ESMA) published its response to the European Commission's consultation on a potential EU personal pension framework as part of ESMA's ongoing work in relation to the Capital Markets Union initiative.

ESMA comments on a number of topics covered by the consultation: product characteristics of a possible EU personal pension product, information to policyholders and distribution rules.

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ESMA publishes updated AIFMD Q&A

On 16 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes two new questions and answers on the cross-border marketing of AIFs, clarifying issues around material changes of existing notifications, as well as two new questions and answers on the delegation of functions by an AIFM to AIFs or third parties.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA defines common supervisory approach for CCPs' service extensions and change of risk models

On 15 November 2016, the European Securities and Markets Authority (ESMA) issued an opinion defining a common supervisory approach for supervisors dealing with central counterparties (CCPs) wishing to extend their existing authorisation or change their risk models under the European Market Infrastructure Regulation (EMIR).

The national competent authorities (NCAs) supervising the authorised CCP should follow some commonly agreed indicators to identify when a change is significant and seek the college's opinion on the project of extension of the services and activities and on the significant change of the risk models and parameters. The college is made up of European NCAs and ESMA.

ESMA now provides an opinion to NCAs for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union.

ESMA asks Commission to delay central clearing for small financial counterparties

On 14 November 2016, the European Securities and Markets Authority (ESMA) published its final report regarding the amended application of the clearing obligation that financial counterparties with a limited volume of activity in OTC derivatives need to comply with under the European Market Infrastructure Regulation (EMIR).

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Due to a range of reasons covered in the report, in particular relevant EU legislations being under review or finalisation, ESMA proposes to postpone the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity.

ESMA's report proposes to amend EMIR's Delegated Regulations on the clearing obligation in order to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations. ESMA is also proposing to align the three compliance dates for Category 3 firms in the Delegated Regulations regarding Interest Rate Swaps and Credit Default Swaps. The newly proposed compliance date would be 21 June 2019.

ESMA's final report was submitted to the European Commission for endorsement of the draft RTS presented in the Annex. From the date of submission, the European Commission should decide within three months whether or not to endorse the RTS.

The European Commission invites European Supervisory Authorities to amend PRIIPs rules and develop guidance

On 11 November 2016, the European Supervisory Authorities (ESAs) - the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA) – received a letter from the European Commission setting out the amendments it proposes to make to the draft regulatory technical standards (RTS) on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), accompanied by draft amended RTS.

The ESAs jointly submitted the draft RTS to the European Commission in April 2016 which was endorsed by the European Commission. The Council of the European Union raised no objections, however, the European Parliament rejected them on 14 September 2016. The European Commission considers that amendments to the RTS provisions on multi-option PRIIPs, performance scenarios and the comprehension alert are required to address the concerns expressed by the European Parliament.

The European Commission invites the ESAs to submit an Opinion on amending the RTS, based on the proposed amendments, within six weeks,

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and to develop guidance in line with the relevant provisions of the RTS on the practical application of credit risk mitigation factors for insurers.

The European Commission recently announced that it expects the PRIIPs rules to enter into force on 1 January 2018, instead of 1 January 2017.

ESMA updates MAR guidelines on market soundings

On 10 November 2016, the European Securities and Markets Authority (ESMA) re-issued the official translations of its final guidelines clarifying the implementation of the Market Abuse Regulation (MAR) for persons receiving market soundings.

Following a linguistic issue in the Polish translation, all 22 language versions are being re-published today which moves its legal application date to 10 January 2017. Today's publication triggers the period of two months within which national competent authorities subject to these guidelines have to notify ESMA whether or not they intend to comply with the guidelines. However, these updates do not concern the substance of the other guidelines which remains unchanged.

The new market abuse regime strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviors. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

ESMA consults on transparency rules for package orders under MiFID II

On 10 November 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft regulatory technical standards (RTS) regarding the treatment of package orders under the amended Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). Overall, MiFID II aims at increasing market integrity, transparency and efficiency.

Package transactions are interlinked financial transactions comprising various instruments which firms execute jointly in order to reduce transaction costs and for risk management purposes. MiFIR's pre-trade transparency regime requires the disclosure of trading interest in all non-equity instruments. However, national competent authorities will be able to waive this requirement if certain conditions are met. Unless there is a

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liquid market for the package order as a whole, the amended MiFID II also allows to waive the pre-trade transparency obligation.

ESMA's draft RTS establish a methodology for determining those package orders for which there is a liquid market in the European Union as a whole, and which consequently may not be waived from pre-trade transparency requirements. The methodology ESMA is proposing is based on qualitative criteria which allows ESMA to take the characteristics of packages into account which are standardised and frequently traded. Based on this methodology, the following package orders would be considered to have a liquid market as a whole:

- Orders where at least one component is subject to the *trading obligation* (under MiFIR) and where all other components are subject to the *clearing obligation* under the European Market Infrastructure Regulation (EMIR); and
- Orders that meet a set of general criteria (all components are standardised; all derivative components can be cleared) plus a set of asset-class specific criteria.

Asset-class specific criteria have been developed for the following asset classes:

- interest rate derivatives;
- equity derivatives;
- credit derivatives; and
- commodity derivatives.

Packages in asset classes for which no asset-class specific criteria exist are considered not to have a liquid market as a whole.

ESMA prepares for MIFID II Systematic Internaliser regime

On 4 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers (Q&A) document on the application of MiFID II/ MiFIR which clarifies when ESMA will publish the first set of data needed to implement the Systematic Internaliser (SI) regime and the date by when firms must comply with the SI regime for the first time.

The key dates are:

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- 1 August 2018: ESMA will publish information on the total number and the volume of transactions executed in the European Union for the first time by 1 August 2018, covering the period from 3 January 2018 to 30 June 2018.
- 1 September 2018: investment firms must undertake their first assessment by and, where appropriate, comply with the SI obligations (including notifying their National Competent Authority) by 1 September 2018.
- Quarterly updates: for subsequent assessments, ESMA will publish data by the first calendar day of February, May, August and November. Investment firms are expected to perform the calculations and comply with the SI regime by the fifteenth calendar day of February, May, August and November.

Application date

The earliest mandatory deadline on which firms must comply with the SI regime, when necessary, is 1 September 2018 although MiFID II and MiFIR apply from 3 January 2018. However, ESMA stresses that investment firms can opt-in to the SI regime for all financial instruments from 3 January 2018 as a means of complying, for example, with the trading obligation for shares.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the MiFID II/ MiFIR and its implementing measures.

Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders

On 28 October 2016, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) launched a consultation on Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders (the Guidelines). The draft Guidelines aim at further improving and harmonising suitability assessments within the EU financial sectors and so ensure sound governance arrangements in financial institutions.

Weaknesses in corporate governance are widely acknowledged to have been one of the underlying causes of the financial crisis where inadequate

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oversight by, and challenge from, the management body in a number of credit institutions and investment firms contributed to excessive and imprudent risk-taking in the financial sector. In order to address those weaknesses, the EBA and ESMA have issued jointly these Guidelines in accordance with the new requirements introduced under the Capital Requirements Directive (CRD) and the Markets in Financial Instruments Directive (MiFID II).

The draft Guidelines:

- provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity, and independence of mind of members of the management body;
- require members of the management body to commit sufficient time to perform their duties and specify how the number of directorships held by members of the management body should be counted, for significant institutions;
- set out how different aspects of diversity, educational and professional background, age, gender and geographical provenance should be taken into account in the recruitment process; and
- highlight the importance of induction and training to ensure the initial and ongoing suitability of members of the management body, and call for institutions to establish training policies and to allocate appropriate financial and human resources to induction and training.

The consultation closes on 28 January 2017 and a public hearing in London will take place on 5 January 2017 from 14:00 to 17:00 UK time.

Legal basis and next steps

These draft Guidelines have been developed according to Article 91 (12) of Directive 2013/36/EU (CRD) and Article 9 of Directive 2014/65/EU.

These Guidelines take also into account the results of the EBA peer review of the Guidelines on the assessment of the suitability of members of the management body and key function holders of credit institutions, published on 22 November 2015.

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The joint Guidelines will apply to Competent Authorities across the EU, as well as to credit institutions and investment firms. Once the revised Guidelines are enforced, the previous EBA Guidelines on the assessment of the suitability of the management body and key function holders from 2012 will be repealed.

Competent Authorities across the EU will be expected to implement the Guidelines by mid-2017.

ESMA issues MiFIR reporting instructions

On 27 October 2016, the European Securities and Markets Authority (ESMA) issued detailed reporting introductions and XML schemas under its Financial Instruments Reference Data System (FIRDS). FIRDS covers the Markets in Financial Instruments Regulation (MiFIR) and the Market Abuse (MAR) requirements for reference data collection and publication, collection and processing of additional data to support the MiFIR transparency regime and suspensions coordination.

The FIRDS provides market participants with additional detailed guidance following the publication of ESMA's final guidelines regarding transaction reporting under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) and should assist firms in preparing their reporting obligations for the incoming regulations.

ESMA issues Q&As on the implementation of MAR

On 26 October 2016, the European Securities and Markets Authority (ESMA) issued a set of Questions and Answers (Q&As) regarding the implementation of the Market Abuse Regulation (MAR).

ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines. Today's Q&As include detailed answers on:

- Managers' transactions; and
- Investment recommendation and information recommending or suggesting an investment strategy

The purpose of this document is to promote common supervisory approaches and practices in the application of MAR and its implementing

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measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the MAR framework.

The content of this document is aimed at competent authorities to ensure that in their supervisory activities and their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on the content of the market abuse rules, rather than creating an extra layer of requirements.

ESMA publishes official translations of MAR guidelines

On 20 October 2016, the European Securities and Markets Authority (ESMA) published 22 language versions of two sets of guidelines under the Market Abuse Regulation (MAR).

ESMA has to translate guidelines into the 22 official languages of the European Union as the publication of the different language version trigger their national applications.

Today's translation cover the following MAR guidelines:

- MAR Guidelines on persons receiving market soundings (ESMA/2016/1477); and
- MAR Guidelines on delay in the disclosure of inside information (ESMA/2016/1478).

ESMA issues Guidelines on Remuneration Practices under UCITS and AIFMD

On 14 October 2016, the European Securities and Markets Authority (ESMA) published two sets of Guidelines: Guidelines on Sound Remuneration under UCITS (UCITS Remuneration Guidelines) and Guidelines on Sound Remuneration under the AIFMD (AIFMD Remuneration Guidelines).

UCITS Remuneration Guidelines

The UCITS Remuneration Guidelines provide clarity on the requirements under the UCITS Directive for management companies when establishing and applying a remuneration policy for key staff. The purpose of the Guidelines is to ensure a convergent application of these provisions and

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provide guidance on the governance of remuneration, requirements on risk alignment, and disclosure.

AIFMD Remuneration Guidelines

The AIFMD Remuneration Guidelines amend the current Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232). The amendment relates to the section of these Guidelines dealing with the application of the remuneration rules in a group context and is intended to acknowledge the potential outreach of the Capital Requirements Directive rules in a banking group.

ESMA published its final report on Guidelines on sound remuneration policies under the UCITS Directive and AIFMD in March of this year.

Next steps

National Competent Authorities (NCAs) must notify ESMA whether they comply or intend to comply with the Guidelines, with reasons for non-compliance, within two months. ESMA will publish a compliance table based on the responses from the NCAs.

The Guidelines apply from 1 January 2017 and have been translated into the 23 official languages of the all of the European Union.

ESMA publishes updated UCITS Q&A

On 12 October 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers (Q&A) document on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes four new questions and answers on: regulated markets in Member States under the UCITS Directive, translation requirements in relation to the remuneration disclosure, reinvestment of cash collateral, and the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation (SFTR).

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 6 October 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes one new question and answer on the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation for Alternative Investment Fund managers.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA consults on requirements for the management of trading venues and reporting services providers

On 5 October 2016, the European Securities and Markets Authority (ESMA) issued a consultation paper on draft guidelines which will further detail the implementation of the Market in Financial Instruments Directive (MIFID II).

The guidelines provide draft provisions management bodies of market operators and data reporting services providers will have to apply once MiFID II has entered into force.

Those MiFID II requirements aim to ensure that the management body and each of its individual members are suitable to ensure sound and prudent management of the firms as well as exercise effective responsibility for the activities undertaken by those firms.

This consultation is closely linked to the consultation paper on Joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under CRD IV and MiFID II, which will be published shortly. The ESMA consultation is open for comments by 5 January 2017 with a view to finalising the guidelines and publishing a final report in the first half of 2017.

ESMA consults on product governance guidelines to safeguard investors

On 5 October 2016, the European Securities and Markets Authority (ESMA) opened a consultation on product governance guidelines under the

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Markets in Financial Instruments Directive (MiFID II) regarding the target market assessment by manufacturers and distributors of financial products.

The requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. These requirements cover arrangements for:

- firms to adopt when manufacturing products (product governance obligations for manufacturers); and
- firms to adopt when deciding the range of products and services they intend to offer to clients and when offering or recommending such products to clients (product governance obligations for distributors).

ESMA reports on shadow banking, leverage and pro-cyclicality

On 4 October 2016, the European Securities and Markets Authority (ESMA) issued a report on securities financing transactions (SFTs), leverage and pro-cyclicality in the EU's financial markets. ESMA's report assesses whether the use of SFTs leads to the build-up of leverage which is not yet addressed by existing regulation, how to tackle such build-up, and whether there is a need to take further measures to reduce its pro-cyclicality.

SFTs allow market participants to access secured financing. SFTs involve the temporary exchange of cash against securities, or securities against other securities – such as securities lending, repurchase transactions, buy-sell/ sell-buy back transactions, or margin lending transactions.

On the other hand, SFTs also contribute to the build-up of leverage in the financial system, which is relevant from a financial stability perspective. A leveraged financial system can be vulnerable to "runs", generate contagion risk and increase pro-cyclicality.

While remaining cautious when considering the introduction of new quantitative regulatory requirements on SFTs, ESMA recommends to:

- introduce the Financial Stability Board's (FSB) qualitative standards in the methodology used to calculate haircuts;

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- address the pro-cyclicality of collateral haircuts in central counterparties in the context of the European Market Infrastructure Regulation (EMIR) review;
- assess the possible extension of the FSB's scope for numerical haircut floors, in particular to government bonds, and the calibration of these floors using SFTR data which will become available in 2018; and
- assess pro-cyclicality and the potential need for further policy tools once sufficient data becomes available.

SFTR will introduce transparency, improve risk monitoring

To make the report, ESMA cooperated with the European Banking Authority (EBA) and the European Systemic Risk Board (ESRB), and relied on various sources of information. At this stage granular supervisory data are lacking, which will only become available once the SFT-Regulation (SFTR) data reporting obligation begins in 2018.

The SFTR aims to increase the transparency of shadow banking activities. It will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository. These details will include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

ESMA issues positive opinion on short selling ban by Italian CONSOB

On 4 October 2016, the European Securities and Markets Authority (ESMA) issued an opinion agreeing to extending an emergency short selling prohibition, for a period of 90 calendar days, by the Commissione Nazionale per le Società e la Borsa (CONSOB) on net short positions in Banca Monte dei Pascha di Siena spa (BMPS) shares under the Short Selling Regulation.

The measure is expected to enter into force at 00:00:01 CEST on 6 October 2016 and will remain in place until 24:00:00 (CET) on 5 January 2017. It temporarily prohibits transactions in any shares, either directly or through related instruments and irrespectively of the venue or market in which the transactions leading to those positions are conducted. The measure does not apply to trading in index-related instruments.

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The short selling measure applies to any natural or legal person, irrespective of their country of residence, and does not exempt market making activities.

ESMA considers that the current circumstances related to BMPS constitute adverse events or developments which constitute a serious threat to market confidence in Italy and that the proposed measure is appropriate and proportionate to address the threat to Italian financial markets.

ESMA issues final guidelines on commodity derivatives inside information

On 30 September 2016, the European Securities and Markets Authority (ESMA) issued final guidelines clarifying one element of the definition of inside information in relation to commodity derivatives under the Market Abuse Regulation (MAR). The new market abuse regime strengthens the existing market abuse framework. In particular, with regards to commodity derivatives, MAR is further specifying the definition of inside information as information that:

- relates directly or indirectly to such commodity derivatives or directly to the related spot commodity contract;
- meets the three conditions of the general definition of inside information in relation to financial instruments (namely being non-public, precise and price sensitive); and
- is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.

The mandate under MAR requires ESMA to issue guidelines on the last element of that definition on establishing a non-exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets. ESMA expects market participants, investors and regulators to take into account the list of examples provided in these guidelines for the assessment of whether information is inside information, noting though that the assessment should also be conducted against the other conditions of the definition not covered by these guidelines. These guidelines do not impose any additional information

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disclosure requirements, as the concept of "*required to be disclosed*" refers to existing or future disclosure requirements (for instance, under national law), independently of these guidelines.

Within two months of the issuance of the different language versions of these guidelines, national competent authority (NCA) will have to confirm whether or not they intend to comply with them. In the event that a NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons.

ESMA consults on future reporting rules for securities financing transactions

On 30 September 2016, the European Securities and Markets Authority (ESMA) issued a consultation paper on draft technical standards implementing the Securities Financing Transaction Regulation (SFTR), which aims to increase the transparency of shadow banking activities. Securities financing transactions (SFTs) are transactions where securities are used to borrow cash (or other higher investment-grade securities), or vice versa – this includes repurchase transactions, securities lending and sell/buy-back transactions.

The SFTR will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository. These details will include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

Steven Maijoor, ESMA Chair, said:

"Regulating securities financing is important as it will reduce financial stability risks from financial market activities, which so far only faced little to no regulation.

"The SFTR will provide transparency to regulators and investors on the use of SFTs, and will better allow to identify risks associated with collateral and its reuse."

ESMA is seeking stakeholder's views on its draft SFTR implementing measures. The key areas of the draft rules include:

- the procedure and criteria for the registration as a trade repository under the SFTR;

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- the use of internationally agreed reporting standards, the reporting logic and the main aspects of the structure and content of SFT reports;
- the requirements regarding transparency of data, data collection, aggregation and comparison; and
- the access levels for different competent authorities.

ESMA has developed its proposals on reporting of SFTs building on its experience with the European Market Infrastructure Regulation (EMIR), and other EU-wide reporting regimes in order to align reporting standards to the maximum extent possible.

In addition to the SFTR, ESMA is proposing certain amendments to the existing standards implementing EMIR. These amendments are drafted to ensure a level-playing-field for market participants with regards to registration and access rules.

Next steps

The consultation is open for feedback until 30 November 2016. ESMA will use the feedback received to finalise its draft technical standards which are to be submitted to the European Commission for endorsement by the end of Q1/beginning Q2 2017. Consequently, the finalised SFTR implementing measures would then be expected to become applicable from 2018.

ESMA updates list of recognised third-country CCPs

On 29 September 2016, the European Securities and Markets Authority (ESMA) has updated today its list of recognised central counterparties (CCPs) based in third countries. Today's update concerns the recognition of the US CCPs ICE Clear Credit LLC (ICC) and the Minneapolis Grain Exchange Inc. (MGEX).

The European Markets Infrastructure Regulation (EMIR) requires third-country CCPs to be recognised by ESMA in order to operate in the European Union.

ESMA publishes the responses to the Call for evidence on asset segregation

On 27 September 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Call for evidence on asset segregation and custody services.

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ESMA sees risk outlook deteriorate for EU securities markets

On 30 August 2016, the European Securities and Markets Authority (ESMA) latest risk report has found that the overall assessment of risk levels in EU markets under its remit remains unchanged. Market and credit risks remain *very high* – the highest level – while liquidity and contagion risk remain *high*.

The risk outlook has deteriorated following the result of the UK referendum on EU membership. Market, liquidity and contagion risks may increase going forward, as political and event risks have intensified, and the macroeconomic environment may deteriorate. The deteriorating liquidity risk outlook reflects increased fund outflows following the referendum, leading to the suspension of redemptions in a number of open-ended funds holding UK commercial property. ESMA updated its risk outlook to reflect the outcome of the referendum.

The details are outlined in its Report on Trends, Risks and Vulnerabilities No. 2, 2016 (TRV) on European Union (EU) markets, which covers market developments from January to June 2016.

In the first part of the reporting period, key trends included high volatility in equity and commodity markets, reflecting valuation concerns, slower emerging markets growth and turmoil in the energy sector caused by falling oil prices. Volatile fund returns and a reassessment of credit risk premia also contributed to portfolio and investment fund outflows. Towards the end of the semester, the outcome of the UK EU referendum had a significant impact in foreign exchange and equity markets, while EU financial market infrastructures proved resilient.

The topical articles feature analyses around the following issues:

- Proxy advisors in the EU: Institutional investors increasingly make use of shareholder advice services. We provide an overview of the EU proxy advisory services market as part of ESMA's investor protection objective.
- Financial innovation scoreboard: ESMA uses a framework that provides a ranking relating product features to ESMA's objectives to prioritise which financial innovations require deeper analysis and potential policy responses.

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- Circuit breakers in the EU: a first-time overview provided on their use by EU trading venues, and one of the main findings is that circuit breakers may help to increase market quality.
- Corporate bond market liquidity in the EU: no systematic trends were observed in liquidity levels in the period analysed, but episodes of decreasing market liquidity were found when wider market conditions deteriorate.
- Synthetic leverage in the asset management industry: evidence suggests that reliance by investment funds on leverage built through the use of derivatives may be on the rise, with potential financial stability implications.

Next steps

ESMA, as part of its ongoing market surveillance, will update its report semi-annually, complemented by its quarterly Risk Dashboard. The results of the report have also been shared with the European Commission, Parliament and Council.

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Markets Update

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Markets Update Issue 8 2016

Welcome to Issue 8 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

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Central Bank of Ireland

MiFID Firms

Address by Michael Hodson, Head of Investment Firms and Funds Services at EY Funds Forum 2016 on The Regulatory Perspective

Address by Michael Hodson, Head of Investment Firms and Funds Services at EY Funds Forum 2016 on The Regulatory Perspective.

CP Third Consultation Feedback Statement

Feedback Statement and Final Guidance on CP86 - The Central Bank has today, 19 December 2016, published the feedback statement on CP86 - Consultation on Fund Management Company Effectiveness - Managerial Functions, Operational Issues and Procedural Matters ("Third Consultation"). Along with this, the Central Bank has published the final on managerial functions, operational issues and procedural matters.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

AIFMD

AIFMD Q&A Twenty-Second Edition Published

On 19 December 2016, the Central Bank published the twenty-second edition of the AIFMD Q&A. Existing question ID 1094 is updated. New questions ID 1112 - ID 1116 are included.

UCITS

UCITS Q&A – Fifteenth Edition Published

On 19 December 2016, the Central Bank published a fifteenth Edition (GNS.4.8.2 UCITS QA NO 15 FINAL_CC) of the UCITS Q&A. Existing question ID 1015 was updated and question ID 1053 was deleted and replaced. New questions ID 1073 – ID 1075 are added.

European Commission

The European Commission announces political agreement on a new prospectus regulation

On 8 December 2016, the Commission announced that they had reached an agreement with the European Parliament and the Council on a revamped prospectus regulation. The new prospectus regulation will replace the existing Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA updates AIFMD Q&A

On 16 December 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

The Q&A includes one updated question and answer on reporting obligations by non-EU AIFMs under Article 42 of the AIFMD, clarifying the circumstances under which information on EU master AIFs should be reported to competent authorities.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA updates MiFID II Q&A on Investor Protection

On 16 December 2016, the European Securities and Markets Authority (ESMA) added new Q&As to its Questions and Answers (Q&A) document on the implementation of investor protection topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR).

This Q&A provides clarifications on the following topics:

- Suitability
- Post sale reporting
- Inducements (research)
- Information on charges and costs
- Underwriting and placement of a financial instrument

MiFID II applies from 3 January 2018 and will strengthen the protection of investors by both introducing new requirements and reinforcing existing ones. The purpose of this Q&A is to promote common supervisory approaches and practices in the application of MiFID II/ MiFIR for investor protection topics.

ESMA will continue to develop this Q&A on investor protection topics under MiFID II in the coming months, both adding questions and answers to the topics already covered and introducing new sections for other MiFID II investor protection areas not yet addressed in this Q&A.

ESMA consults on extending aggregated trade repository data

On 15 December 2016, the European Securities and Markets Authority opened a public consultation on the extension of data available to the public in trade repositories as stipulated in the European Market Infrastructure Regulation (EMIR).

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

Public data has experienced several problems related to the comparison and aggregation of data across trade repositories. Therefore, ESMA is setting out several proposals to enhance the data made publicly available by trade repositories and to increase the transparency to the public in general as well as allowing to add the publication of certain figures that will be required by EU regulations such as MiFID II and the Benchmarks Regulation.

This consultation asks stakeholders' views on ESMA's proposals related to:

- the avoidance of double counting of cleared derivatives;
- data aggregations for commodity derivatives and
- derivatives using benchmarks, as well as general technical aspects of publication of aggregate data.

The consultation is open for feedback until 15 February 2017. ESMA will use the feedback received to finalise the amendments to the technical standards.

ESMA recognises ICE Clear US Inc. as third-country CCP under EMIR

On 14 December 2016, the European Securities and Markets Authority (ESMA) added ICE Clear US Inc. to its list of recognised third-country central counterparties (CCPs) under the European Markets Infrastructure Regulation (EMIR). EMIR requires EU-based CCPs to be authorised and non-EU CCPs to be recognised in the European Union (EU). Once a CCP has been authorised or recognised within the EU, EU firms can use these CCP to fulfil their clearing obligations.

ESMA sees continued high levels of market risks

On 1 December 2016, the European Securities and Markets Authority (ESMA) risk assessment has updated its Risk Dashboard for the third quarter of 2016.

ESMA European Rating Platform

The European Securities and Markets Authority (ESMA) has launched its new database, the European Rating Platform, to provide access to free, up-to-date information on credit ratings and rating outlooks on its website. The ERP is an important element of ESMA's work, following the financial

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crisis, to increase transparency around credit ratings and help investors make informed decisions.

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Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Markets Update

Issue 1 2016

23 February 2016

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Markets Update Issue 1 2016

Welcome to Issue 1 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

AIFMD

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Investor Money Regulations 2015 for Fund Service Providers – SI 105 of 2015 ("Investor Money Regulations")

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers - SI 105 of 2015 ('Investor Money Regulations') were signed on 25 March 2015 and were due to come into operation on 1 April 2016. The Investor Money Regulations set out requirements in relation to fund service providers holding investor money. The Central Bank has decided to postpone the operation date of the Investor Money Regulations from 1 April 2016 to 1 July 2016 subject to certain additional reporting requirements on transition planning in relation to which the Central Bank will be in communication with fund service providers.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

Central Bank Consultation Papers of Interest

CP101: Consultation on a Capital Requirement Framework for Market Operators

On 12 February 2016, the Central Bank of Ireland issued a Consultation Paper on a proposed Capital Requirement Framework for Market Operators.

Securities Markets

New Procedures for Disclosure of Home Member State under Transparency (Directive 2004/109/EC) Regulations 2007 (as amended)

As referred to in our November Issue, with effect from 27 November 2015, new requirements for the disclosure of home Member State under the Transparency (Directive 2004/109/EC) Regulations (as amended) apply. An issuer is now required to disclose its home Member State to:

- the competent authority of its home Member State;
- the competent authority of the Member State where its registered office is located, where applicable; and
- the competent authorities of all host Member States.

An issuer is also required to disclose its home Member state to the market.

Disclosure of home Member State to the relevant competent authorities should be made using the Standard Form for Disclosure of Home Member State which is published on ESMA's website.

Exemption

The Transparency Directive provides for an exemption from the home Member State disclosure requirements for issuers that had a choice of home Member State and who communicated that choice to the competent authority of their home Member State prior to 27 November 2015.

If an issuer with securities admitted to trading on a regulated market prior to 27 November 2015 did not communicate its choice of Ireland as home Member State to the Central Bank prior to 27 November 2015, the issuer is

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required to make the disclosures detailed above by 26 February 2016. Failure to do so may result in the issuer being deemed to have one or more home Member States.

An issuer is advised to complete the Standard Form for Disclosure of Home Member State and submit same to the Central Bank at regulateddisclosures@centralbank.ie where there is any doubt as to whether the required communication has been made to the Central Bank.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA adds list of clearing members to its public register on EMIR

On 19 February 2016, the European Securities and Markets Authority (ESMA) published an update of its Public Register for the Clearing Obligation.

The update concerns the so-called category 1 clearing members, which are either financial counterparties or non-financial counterparties above the clearing threshold who are clearing members of a central clearinghouse (CCP). Category 1 firms will be the first firms to start the central clearing of certain types of derivative contracts by 21 June 2016.

ESMA has worked with national competent authorities and CCPs to facilitate the identification of those Category 1 counterparties. All EU CCPs and third-country CCPs which are authorised or recognised to clear OTC interest rate swaps in the G4 currencies have now published on their websites the lists of their Category 1 clearing members in a common format. With today's updated list, ESMA is providing the links in an updated version of the Public Register for the Clearing Obligation, Section 1.3.

ESMA's first RTS on the clearing obligation, which establish that certain OTC interest rate derivatives denominated in the G4 currencies (i.e. EUR, GBP, JPY and USD) shall be cleared by central counterparties, entered into force on 21 December 2015.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

ESMA publishes transactions of its Transparency Directive standard form for home Member State disclosure

On 18 February 2016, the European Securities and Markets Authority (ESMA) published translations of its standard form for the disclosure of home Member State by issuers under the Transparency Directive (TD).

The TD requires issuers whose securities are admitted to trading on an EU regulated market to disclose their home Member State, to their home Member State's competent authority, all host Member States' competent authorities and the competent authority of the Member State in which the issuer has its registered office.

The purpose of the form is to simplify the filing procedure for issuers and to provide national authorities with a consistent set of information.

ESMA updates EMIR Q&A

On 16 February 2016, the European Securities and Markets Authority (ESMA) issued an update of its Question and Answers (Q&As) regarding the implementation of the European Market Infrastructure Regulation (EMIR).

The Q&A clarifies how the clearing obligation should apply to swaps resulting for the exercise of a swaption, including during the frontloading period and the approach on frontloading that was adopted in the ESMA's first RTS (on the clearing obligation, which entered into force on 21 December 2015.

ESMA's EMIR Q&As aim at providing clarity to market participants ahead of the various compliance deadlines resulting from the first RTS on the clearing obligation, which establish that certain OTC interest rate derivatives denominated in the G4 currencies (i.e. EUR, GBP, JPY and USD) shall be cleared by central counterparties.

ESMA issues follow-up review on money market fund guidelines

On 16 February 2016, the European Securities and Markets Authority (ESMA) issued a follow-up peer review into the compliance of national competent authorities (NCAs) with guidelines regarding money market funds.

This report follows up an earlier peer review already published in April 2013, focusing on eight NCAs that were not compliant with the guidelines.

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The follow-up peer review covers the period from 1 May 2014 to 1 May 2015. Peer reviews and their follow up are an important means of identifying areas for further convergence in the application of Union law and of incentivising convergence.

This report provides an update on the findings of the first peer review and sets out the result of this second assessment by peers. Out of the eight jurisdictions subject to this follow-up peer review assessment, in seven countries the guidelines are now applied. The countries now fully applying the guidelines are: Bulgaria, Cyprus, Liechtenstein, Lithuania, Latvia, Malta and Portugal.

ESMA announces Open Hearing on MAR guidelines

On 12 February 2016, the European Securities and Markets Authority (ESMA) held an open hearing on its Consultation Paper published on the 28th of January 2016 on two sets of draft Guidelines to be issued by ESMA under the remit of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (MAR).

ESMA resumes US CCP recognition process following EU-US agreement

On 10 February 2016, the European Securities and Markets Authority (ESMA) welcomed the common approach announced today by the European Commission and the US Commodity Futures Trading Commission (CFTC) on the equivalence of CCP regimes.

This is an important step towards market participants being able to use clearing infrastructures in both the US and Europe, and for the proper functioning of the global derivatives markets.

Once the equivalence decision by the European Commission on the US regime for CFTC-supervised CCPs is adopted, ESMA will rapidly resume the recognition process of specific CFTC-supervised US CCPs that had applied to ESMA to be recognised in the EU.

While the European Market Infrastructure Regulation (EMIR) gives ESMA up to 180 working days to conclude that recognition, ESMA intends to do everything within its powers to shorten that period to the maximum extent and proceed with recognition as soon as the US applicant CCPs meet the conditions contained in those equivalence decisions.

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Given the 21 June 2016 deadline for the start of the clearing obligation in the EU, ESMA understands that US CCPs will have a strong interest in becoming fully compliant with the EU equivalence conditions in order to be eligible to fulfil the EU clearing obligation requirement, which should help in shortening that period. ESMA cannot commit to any specific dates for the recognition decisions, given that such decisions mainly depend on the compliance by CCP applicants.

ESMA will also consider as a matter of priority the next steps on its consultation on the amendment to its Regulatory Technical Standard (RTS) regarding the minimum period of risk for different types of clearing accounts in EU CCPs.

ESMA publishes responses to the Consultation on PRIIPs Key Information Documents

On 10 February 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on PRIIPs Key Information Documents.

ESMA publishes responses to the Consultation on access, aggregation and comparison of TR data

On 10 February 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on access, aggregation and comparison of TR data.

ESMA assesses Turkish laws and regulations on prospectuses

On 8 February 2016, the European Securities and Markets Authority (ESMA) reviewed Turkish legislation governing prospectus disclosure requirements and concludes that a prospectus drawn up against Turkish requirements can constitute a valid prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State.

This Opinion should be read in conjunction with ESMA's opinion on the Framework for the assessment of third country prospectuses under Article 20 of the Prospectus Directive.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

ESMA updates its EMIR Q&A

On 4 February 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes new answers regarding CCP's default management, competent authorities' access to trade repository data and reporting of notional in position reports.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA publishes responses to the EMIR Consultation on MPOR client accounts

On 4 February 2016, the European Securities and Markets Authority (ESMA) has the responses received to the Consultation on review of Article 26 of RTS No 153/2013 with respect to MPOR for client accounts.

ESMA issues opinions on UK pension schemes to be exempt from central clearing under EMIR

On 2 February 2016, the European Securities and Markets Authority (ESMA) issued a set of opinions regarding the exemption of 16 UK pension schemes from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

Today's document published by ESMA contains opinions on 16 UK-based pension schemes where the UK Financial Conduct Authority (FCA) is the competent authority for securities markets. After the exemptions are granted by the FCA, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA issues technical standards on settlement discipline under CSDR

On 1 February 2016, the European Securities and Markets Authority (ESMA) published draft regulatory technical standards (RTS) on settlement discipline which ESMA has to deliver for the implementation of the Central Securities Depository Regulation (CSDR).

The CSDR harmonises the authorisation and supervision of EU central securities depositories. It also introduces a mandatory buy-in and other settlement discipline measures to tackle settlement fails. ESMA's RTS includes details on:

- measures for preventing settlement fails, through various processes and functionalities, such as:
- automated matching;
- partial settlement;
- hold and release mechanism.
- measures for monitoring and addressing settlement fails, in particular:
- the cash penalties mechanism; and
- the buy-in process.

The European Commission has now three months to endorse the RTS, followed by a non-objection period of the European Parliament and Council. These rules will then enter into force two years after their publication in the Official Journal of the European Union. This will give enough time to relevant stakeholders to implement the changes needed to comply with the CSDR.

ESMA publishes consolidated UCITS Q&A

On 1 February 2016, the European Securities and Markets Authority (ESMA) published a consolidated Questions and Answers (Q&A) on the

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application of the Undertakings for the Collective Investment In Transferable Securities Directive (UCITS).

The consolidated Q&A include new questions on additional documents funds need to provide for UCITS V. This new Q&A also brings together the following four existing ESMA Q&As on UCITS:

- The Key Investor Information Document (KIID) for UCITS (2015/631);
- Q&A on ESMA's guidelines on ETFs and other UCITS issues (2015/12);
- Notification of UCITS and exchange of information between competent authorities (2012/428); and
- Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS (2013/1950).

The UCITS Directive is a detailed, harmonised framework for investment funds that can be sold to retail investors through the EU. This means that funds authorised in one Member State can be marketed in another Member State using a passporting mechanism. Originally introduced in 1985, the UCITS rules have been revised several times, most recently via the UCITS V Directive which comes into force on 18 March 2016.

ESMA updates registers under MiFID and Short Selling Regulation

On 1 February 2016, the registers under MiFID and the Short Selling Regulation were migrated to the global ESMA Registers web portal.

This migration concerns the following lists:

- Shares admitted to trading on regulation markets
- Exempted shares
- Systematic internalisers
- Regulated Markets
- Multilateral trading facilities
- Central counterparties

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To ensure a smooth transition, from 1 February 2016 to 31 March 2016 the data will be available in both Portals. On 1 April 2016 the old portal will be shut down and not accessible. For automated access to these lists, please consult the updated web service procedure also published today.

ESMA consults on MAR guidelines regarding market soundings and delayed disclosure of inside information

On 28 January 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft guidelines clarifying the implementation of the Market Abuse Regulation (MAR). MAR strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviours. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

ESMA was seeking stakeholder's feedback on draft guidelines:

- for persons receiving market soundings (MAR introduces a detailed regime for "market soundings"); and
- on legitimate interests of issuers to delay disclosure of inside information (MAR provides the possibility, under certain circumstances, to delay the disclosure of insider information) and on situations in which the delay of disclosure is likely to mislead the public.

ESMA considered the feedback to this consultation with a view to finalising the two sets of Guidelines and publishing a final report by early Q3 2016. MAR will directly apply in EU Member States from 3 July 2016, amending the previous Market Abuse Directive (MAD). As provided for in MAR, ESMA already delivered Draft Technical Standards, setting out further detailed rules required by MAR, notably in relation to disclosing market participants conducting market soundings. ESMA is still preparing a consultation paper on a third set of guidelines required under MAR and relating to the information expected or required to be published in relation to commodity derivatives.

ESMA publishes letter from European Commission on AIFMD passport

On 19 January 2016, the European Securities and Markets Authority (ESMA) published the letter it received from the European Commission

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(EC) in respect of its advice on the application of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU AIFMs and AIFs, and ESMA's opinion on the functioning of the passport for EU AIFMs and on the national private placement regimes (NPPRs).

The EC had asked ESMA to complete its assessment of the regimes of the USA, Hong Kong, Singapore, Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia by 30 June 2016.

The EC agreed with ESMA's suggestion that it produce another opinion on the functioning of the EU passport and NPPRs once the AIFMD has been fully transposed in all the EU and there is more experience on the functioning of this framework. ESMA suggested it produce another opinion because the delay in implementing the AIFMD, together with the delay in the transposition of the Directive in some Member States, made it difficult for ESMA to provide a definitive assessment by July 2015, the initial legislative deadline.

ESMA issues negative opinion on extending Greek short selling ban

On 11 January 2016, the European Securities and Markets Authority (ESMA) issued a negative opinion on a proposed extension of the emergency short selling prohibition, regarding Attica Bank S.A. (ISIN GRS001003011), proposed by the Hellenic Capital Market Commission (HCMC).

The HCMC had proposed extending the current prohibition on short sales in any shares of Attica Bank admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed, which expires at 24:00:00 (CET), the 11 January 2016.

The temporary prohibition included sales of shares covered by subsequent intraday purchases and applied to all depository receipts (ADRs, GDRs) and warrants representing shares of Attica Bank admitted to trading on the Athens Exchange. The short selling measure applies to any natural or legal person, irrespective of their country of residence, but would be subject to the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes.

ESMA considers that adverse developments that had constituted a serious threat to market confidence in the Greek market have eased and therefore

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the proposed prolongation of the ban would not be appropriate or proportionate.

If the HCMC decides to renew the emergency short selling prohibition contrary to ESMA's opinion, the HCMC would have to publish their reasons for doing so within 24 hours.

ESMA assesses regulators' compliance with market maker exemption under Short-Selling Regulation

On 5 January 2016, the European Securities and Markets Authority (ESMA) published the results of a targeted review it conducted among five national competent authorities (NCAs) under the Short-Selling Regulation (SSR).

Public Hearing on KID for PRIIPs

On 23 December 2015, the European Supervisory Authorities (the ESAs – the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA), and the European Banking Authority (EBA)) held a Public Hearing on the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs) in Frankfurt on 9 December 2015.

The ESAs are currently consulting on their regulatory technical standards (RTS) for PRIIPS and the purpose of the Public Hearing was to explain the PRIIPs consultation paper to stakeholders and provide an opportunity for them to raise questions. The consultation closes on 29 January 2016.

ESMA consults on transaction reporting, reference data, record-keeping and clock synchronisation under MiFIR

On 23 December 2015, the European Securities and Markets Authority (ESMA) published a Consultation Paper (CP) on guidelines regarding the Markets in Financial Instruments Regulation (MiFIR) under which ESMA has to develop the implementing details.

The CP seeks stakeholders feedback on future guidance regarding:

- Transaction Reporting;
- Reference Data;
- Order Record Keeping; and
- Clock Synchronisation

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

The CP specifies individual scenarios applicable to a given transaction or order activity. Each of the scenarios is accompanied with the sample of XML ISO 20022 format to be used by firms to represent the values to be reported.

In addition to the transaction reporting and order record keeping scenarios, the CP provides clarifications on the application of the relevant MiFiD II requirements which were requested by market participants during earlier consultations but could not be addressed by the final technical standards due to the level of detail of such requests. ESMA may need to add further clarifications to this guidance as dialogue with market participants raises new issues.

The consultation is open for comment until 23 March 2016.

ESMA publishes results of second Market Abuse Directive peer review

On 22 December 2015, the European Securities and Markets Authority (ESMA) published the results of its follow-up review of national competent authorities' (NCAs) supervisory regimes with regard to the Market Abuse Directive (MAD).

ESMA issues favourable opinion extending Greek HCMC short selling ban

On 21 December 2015, the European Securities and Markets Authority (ESMA) issued its official opinion agreeing to an extension of the emergency short selling prohibition by the Hellenic Capital Market Commission (HCMC) on the shares of certain credit institutions under the Short Selling Regulation that expires at 24:00:00 (CET) on Monday 21 December 2015.

The measure will remain in place until 24:00:00 (CET) on 11 January 2016 and temporarily prohibits short sales in any shares of Attica Bank S.A. (ISIN GRS001003011) admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed. The temporary prohibition would include sales of shares covered by subsequent intraday purchases. The temporary prohibition of short selling would apply to all depository receipts (ADRs, GDRs) and warrants representing shares of Attica Bank S.A. (ISIN GRS001003011) admitted to trading on the Athens Exchange. As for previous bans, an exemption for market making activities in the affected financial instruments would be foreseen.
Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

The short selling measure applies to any natural or legal person, irrespective of their country of residence, but would be subject to the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes.

ESMA considers that adverse developments which constitute a serious threat to market confidence in the Greek market still persist and that the proposed measure is appropriate and proportionate to address those threats.

ESMA publishes responses to the Consultation on indirect clearing under EMIR and MiFIR

On 21 December 2015, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on indirect clearing under EMIR and MiFIR.

The Consultation shall apply from 3 January 2016.

ESMA publishes Final Report on MiFID II Guidelines on assessment and knowledge of competence

On 17 December 2015, the European Securities and Markets Authority (ESMA) published the Final Report on guidelines for the assessment of knowledge and competence.

These guidelines are intended to enhance investor protection by increasing the knowledge and competence of natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of investment firms.

As required under Article 25(9) of MiFID II, these guidelines specify the criteria for the assessment of the necessary knowledge and competence requirements of investment firms' staff. These guidelines have been developed to enable firms to fulfil their obligations under Articles 24 and 25 of MiFID II, such as meeting general conduct of business principles, information and reporting to clients, and suitability and appropriateness requirements, through the attainment of appropriate qualifications and appropriate experience by their staff.

The guidelines will come into effect on 3 January 2017.

Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

ESMA sees continued high levels of risk in financial markets

On 16 December 2015, the European Securities and Markets Authority (ESMA) issued its Risk Dashboard for the European securities markets covering the third quarter of 2015.

Overall, the report found that risk levels remained high compared to the last quarter -- including elevated risks for investors, infrastructures and services, and the financial system at large. Market risks indicators continued to remain at "very high", following a continuous build-up in the preceding quarters. Key risk drivers were the low-interest-rate environment, high asset valuations, potential spill-overs from emerging markets and fiscal and political developments within the EU. ESMA's market risk outlook remains unchanged at "very high".

ESMA's credit risk assessment remains unchanged at very high levels. While still at a lower level, liquidity risk is under scrutiny due to intensifying pressures, while contagion and operational risk remain unchanged at high and elevated levels. Systemic stress remained at a high level in 3Q15, driven by prolonged market uncertainty over sovereign debt in the EU and rising concerns over market developments in emerging markets. A low interest rate environment still prevails in the EU as market developments in currency and commodity markets raised concerns over potential deflationary pressures. The macroeconomic environment saw increased uncertainty over the future monetary policy stance in the EU and in the US. This, together with potentially thin liquidity on some more vulnerable markets could amplify the risk of a reversal in global risk.

ESMA publishes updated CRA Q&A

On 16 December 2015, the European Securities and Markets Authority (ESMA) published an updated questions and answers on the application of the Credit Rating Agencies Regulation.

The revised Q&A clarifies the definition of unsolicited credit ratings, specifically whether a credit rating issued upon the request of a person different from the rated entity/issuer and a related third party constitutes a solicited credit rating.

ESMA publishes updated AIFMD Q&A

On 15 December 2015, the European Securities and Markets Authority (ESMA) published an updated questions and answers on the application of

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the Alternative Investment Fund Managers Directive (AIFMD). The Q&A include a new questions and answers on the depositary liability regime.

ESMA updates its Q&A document on prospectus related issues

On 15 December 2015, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures. In this 23rd version of the Q&A, a new question 96 has been added regarding the level of disclosure which should be included in a prospectus related to securities which may be subject to write-down or conversion powers under the Bank Recovery and Resolution Directive (BRRD). Furthermore, the existing question 26 on calculation of the €5 million threshold in Article 1(2)(h) of the Prospectus Directive has been extended to cover also calculation of the €75 million threshold in Article 1(2)(j).

Report on investment firms

On 14 December 2015, the European Securities and Market Authority (ESMA) cooperated with the European Banking Authority (EBA) in the development of an EBA report on investment firms. This report was issued in response to a call for advice by the European Commission on the prudential requirements applicable to investment firms addressed to EBA in December 2014.

ESMA issues standards on reporting, cooperation & suspensions under MiFID II

On 11 December 2015, the European Securities and Markets Authority (ESMA) published Implementing Technical Standards (ITS) regarding the implementation of the Market in Financial Instruments Directive (MiFID II). ESMA's ITS translate how the legislation will apply in practice to market participants, market infrastructures and national supervisors.

The rules ESMA is delivering today on MiFID II specify standard forms, templates and procedures which are to be used in the future in the following areas:

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- cooperation arrangements for trading venue of substantial importance in a host Member State;
- suspension and removal of financial instruments from trading on a Regulated Market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF);
- authorisation of data reporting services providers;
- position reporting and weekly position reports;
- cooperation between competent authorities in supervisory activities, on-site verifications, and investigations and for the exchange of information;
- consultation of other competent authorities prior to granting an authorisation; and
- submission of information on sanctions and measures.

The publication of today's ITS follows two other sets of Technical Standards on the implementation of MiFID II published in June and September. ESMA's different sets of Technical Standards have been sent for endorsement to the European Commission.

ESMA consults on improved access to trade repository data

On 11 December 2015, the European Securities and Markets Authority (ESMA) published a consultation paper which proposes to enhance the current functionalities offered by trade repositories (TRs) for data access under the European Market Infrastructure Regulation (EMIR).

ESMA thinks that the current rules for TR access should be significantly improved as currently, the comparability of data is not sufficient.

In order to further improve the quality of data reported under EMIR, ESMA proposes amendments to the current rules in order to ensure direct and immediate access to data by national competent authorities (NCAs) and to facilitate the aggregation and comparison of data across trade repositories.

The proposed improvements refer to the following aspects:

- standardised output format of the TR data, based on international ISO standards, allowing better comparison and aggregation of data across repositories;

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- minimum types of data queries that need to be available for the authorities;
- standardised and secure data exchange, based on ISO standards, between TRs and NCAs;
- standard frequencies for the provision of direct and immediate access to TR data;
- secure machine-to-machine connection and use of data encryption protocols.

ESMA seeks stakeholders' feedback on it's proposed amendments by 1 February 2016.

ESMA's new IT Hub which is currently under development will support all the proposed functionalities.

ESMA seeks candidates for its stakeholder representative group

On 3 December 2015, the European Securities and Markets Authority (ESMA) sought candidates to represent the interests of financial markets stakeholders of all types as members of its Securities Markets Stakeholders Group (SMSG).

The SMSG helps to facilitate consultation between ESMA, its Board of Supervisors and stakeholders on ESMA's areas of responsibility and provides technical advice on its policy development. This helps to ensure that stakeholders can contribute to the formulation of policy from the beginning of the process.

The successful candidates will take up their roles in July 2016.

Open Consultation Papers of Interest

EBA consults on draft guidelines on implicit support for securitisation transactions

On 20 January 2016, the European Banking Authority (EBA) launched a public consultation on draft Guidelines on implicit support for securitisation transactions. The objective of the Guidelines is to provide clarity on what constitutes arm's length conditions and when a transaction

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is not structured to provide support for securitisations. The consultation runs until 20 April 2016.

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Markets Update Issue 2 2016

Welcome to Issue 2 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

AIFMD

AIFMD Q&A – Eighteenth Edition Published

On 24 March 2016, the Central Bank published an eighteenth edition of the AIFMD Q&A.

ID 1100 has been amended to make reference to the publication of guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies". New questions ID 1101 and ID 1102 have also been added dealing with the Central Bank's updated Guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies".

A new question ID 1103 has been added dealing with the Securities Financing Transactions Regulation.

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UCITS

UCITS Q&A – Twelfth Edition Published

On 24 March 2016, the Central Bank published a twelfth edition of the UCITS Q&A.

ID 1057 has been amended to make reference to the publication of guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies". New questions ID 1060 and ID 1061 have also been added dealing with the Central Bank's updated Guidance entitled "Umbrella funds – cash accounts holding subscription, redemption and dividend monies".

A new question ID 1062 has been added dealing with the Securities Financing Transactions Regulation.

Securities Markets

Regulatory Technical Standards for approval and publication of the prospectus and dissemination of advertisements effective 24 March 2016

Please be advised that Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No. 809/2004 was published on 4 March 2016 in the Official Journal of the European Union.

It shall come into force on 24 March 2016.

Investor Money Regulations

The Investor Money Regulations will be imposed, for the first time, on fund service providers holding investor money in collection accounts; the Investor Money Regulations will be effective from 1 July 2016.

The Central Bank has also published Guidance for Fund Service Providers to assist Industry in interpreting the regulations.

On 5 October 2015, the Central Bank published the first edition of the Investor Money Q&A. The Investor Money Regulations Q&A sets out
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answers to queries likely to arise in relation to the implementation of the Investor Money Regulations (IMR). It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered.

Speeches to Markets Industry

Address by Gareth Murphy, Director of Markets Supervision, Central Bank of Ireland at the launch of Duff and Phelps Global Regulatory Outlook

Address by Gareth Murphy, Director of Markets Supervision, Central Bank of Ireland at the launch of Duff and Phelps Global Regulatory Outlook.

Address by Gareth Murphy, Director of Markets Supervision, Central Bank of Ireland to the 5th Annual Funds Congress

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European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA consults on Securities Financing Transaction Regulation

On 11 March 2016, the European Securities and Markets Authority (ESMA) issued a Discussion Paper (DP) on rules under the Securities Financing Transaction Regulation (SFTR).

The SFTR, published in December 2015, is the European Union's response to the global initiative to bring more transparency to shadow banking activities. The new rules on transparency require both financial and non-financial market participants to report details of their securities financing transactions. Details to be reported include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

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The DP sets out proposals for implementing the reporting framework under the SFTR, including tables of the fields with the proposed data to be reported, and the registration requirements for those Trade Repositories (TRs) which want to accept reports on security financing transactions.

In line with the SFTR requirement to build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories, ESMA has developed its proposals by building on its experience with EMIR and other EU-wide reporting regimes in order to align reporting standards to the extent possible.

ESMA sought feedback from all stakeholders, in particular, from entities active in the repo, securities lending/borrowing and commodities lending/borrowing markets. It also particularly welcomes feedback from persons carrying out buy/sell-back and margin lending, TRs, central counterparties (CCPs) and central securities depositories (CSDs).

Next steps

The consultation closes on 22 April 2016. ESMA will use the responses to its DP to develop detailed rules on which it will publish a follow-up consultation in the second half of 2016. ESMA shall send its draft rules for approval to the European Commission by 13 January 2017.

ESAs publish final draft technical standards on margin requirements for non-centrally cleared derivatives

On 9 March 2016, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) published the final draft Regulatory Technical Standards (RTS) outlining the framework of the European Market Infrastructure Regulation (EMIR).

These RTS cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

The draft RTS contain the following provisions:

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- For OTC derivatives not cleared by a Central Counterparty (CCP), the draft RTS prescribe that counterparties have to exchange both initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.
- The draft RTS outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts.
- The draft RTS lay down the operational procedures related to documentation, legal assessments of the enforceability of the agreements and the timing of the collateral exchange.
- The draft RTS cover the procedures for counterparties and competent authorities related to the treatment of intragroup derivative contracts.

The RTS will be applied in a proportionate manner to allow counterparties to phase in the requirements.

Legal framework and background

These draft RTS have been developed on the basis of Article 11(15) of Regulation (EU) No 648/2012 (EMIR), which establishes provisions aimed at increasing the safety and transparency of the over-the-counter (OTC) derivatives markets in the EU.

In developing these standards, the ESAs have taken into consideration the need for international consistency and have, therefore, used the framework established by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) and the BCBS supervisory guidance for managing risks associated with the settlement of foreign exchange transactions, while taking into account the specific features of the European financial market.

In order to address risks related to the derivative markets, the European Parliament and the Council have adopted the European Market Infrastructure Regulation (EMIR) – formally known as Regulation EU No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

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EMIR establishes provisions aimed at increasing the safety and transparency of the OTC derivatives markets and requires OTC derivative contracts to be cleared, derivative transactions to be reported to trade repositories and sets a framework to enhance the safety of central counterparties (CCP).

The EMIR was published on 4 July 2012 and entered into force on 16 August 2012. It is directly applicable in all EU Member States.

Notes for editors

The Joint Committee is a forum for cooperation that was established on 1 January 2011, with the goal of strengthening cooperation between the three European Supervisory Authorities (ESAs) (European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority).

The Joint Committee allows the ESAs to cooperate in ensuring consistency in their practices. In particular, the Joint Committee works in the areas of supervision of financial conglomerates, accounting and auditing; micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability; retail investment products and measures combating money laundering.

ESMA issues report on risks and costs of CCP interoperability

On 1 March 2016, the European Securities and Markets Authority (ESMA) issued it's final report on systemic risk and cost implications of interoperable arrangements between central clearing houses (CCPs) established under the European Market Infrastructure Regulation (EMIR).

European Banking Authority (EBA)

MiFID Firms

EBA issues amended standards on supervisory reporting for institutions

On 23 March 2016, the European Banking Authority (EBA) published its final draft Implementing Technical Standards (ITS) amending the

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Commission's Implementing Regulation (EU) No. 680/2014 on supervisory reporting.

Consultation on Guidelines on corrections to modified duration for debt instruments

On 22 March 2016, the European Banking Authority (EBA) published its Consultation on Guidelines on corrections to modified duration for debt instruments.

ESAs publish final draft technical standards on margin requirements for non-centrally cleared OTC derivatives

On 8 March 2016, the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) published today the final draft Regulatory Technical Standards (RTS) outlining the framework of the European Market Infrastructure Regulation (EMIR).

These RTS cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

The draft RTS contain the following provisions:

- For OTC derivatives not clear by a Central Counterparty (CCP), the draft RTS prescribe that counterparties have to exchange both initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.
- The draft RTS outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts.
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The RTS will be applied in a proportionate manner to allow counterparties to phase in the requirements.

Legal framework and background

These draft RTS have been developed on the basis of Article 11(15) of Regulation (EU) No 648/2012 (EMIR), which establishes provisions aimed at increasing the safety and transparency of the over-the-counter (OTC) derivatives markets in the EU.

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EMIR establishes provisions aimed at increasing the safety and transparency of the OTC derivatives markets and requires OTC derivative contracts to be cleared, derivative transactions to be reported to trade repositories and sets a framework to enhance the safety of central counterparties (CCP).

The EMIR was published on 4 July 2012 and entered into force on 16 August 2012. It is directly applicable in all EU Member States.

Open Consultation Papers of Interest

EBA Consultation on COREP

On 7 March 2016, the European Banking Authority (EBA) launched a public consultation on the inclusion of prudent valuation into Common Reporting (COREP), the reporting framework through which EU banking

institutions report supervisory information. The amendments proposed by the EBA reflect the prudent valuation requirements in Commission Delegated Regulation (EU) No 2016/101. This public consultation will run until 30 March 2016.

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Central Bank of Ireland

AIFMD

CP86: Fund Management Company Effectiveness

The Central Bank has today, 2 June 2016, issued a further consultation paper on Fund Management Company Effectiveness. Consultation Paper CP86 – Third consultation addresses managerial functions, operational issues and procedural matters. It sets out the work already undertaken by the Central Bank in relation to governance of fund management companies and outlines the proposed approach to Compliance and Supervisability issues. Respondents are invited to comment on the proposed rules and guidance.

Responses should be submitted no later than 25 August 2016.

CP99: Consultation on Amendments to the AIF Rulebook

The Central Bank has today, 2 June 2016, published its feedback statement CP99: Consultation on Amendments to the AIF Rulebook. This

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summarises the responses received along with the Central Bank's comments and decisions.

Nineteenth Edition of the AIFMD Q&A

On 2 June 2016, the Central Bank published a nineteenth edition of the AIFMD Q&A. The new questions added are: ID 1104 (Fund Management Company - organisational effectiveness); ID 1105 (Rules - significant Influence in the context of certain types of AIFs); and ID 1106-ID 1107 (Companies Act 2014). (ID 1106 was previously issued in the form of a general information note and included in the Markets Update published on 12 June 2015.)

UCITS

Publication of First Set of Amending Central Bank UCITS Regulations 2015

The Central Bank UCITS Regulations 2015 required amendment as a consequence of the implementation of UCITS V. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (UCITS)(Amendment) Regulations 2016 are in the process of being finalised and the amended Regulations will be published shortly. Notification of this publication will appear in the 'What's New' section of the Central Bank website and in the RSS feed.

CP105: Consultation on Amendments to the Central Bank UCITS Regulations

The Central Bank has today, 2 June 2016, issued a consultation paper CP105 - Consultation on amendments to the Central Bank UCITS Regulations. This consultation closes on the 25 August 2016.

Thirteenth Edition of UCITS Q&A

On the 2 June 2016, the Central Bank published a thirteenth edition of the UCITS Q&A. The new questions added are: ID 1063 (UCITS Management Company - organisational effectiveness); ID 1064 (share class hedging); and ID 1065-ID 1066 (Companies Act 2014). (ID 1065 was previously issued in the form of a general information note and included in the Markets Update published on 12 June 2015.) An existing question - ID 1013 - has been amended. This deals with past performance data and the heading of this section has been revised accordingly.

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Securities Markets

Market Abuse Regulation: The Central Bank has amended its website guidance on the Market Abuse Regime

The new Market Abuse Regime, which consists of the Market Abuse Regulation (EU 596/2014 - 'MAR') and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU or 'CSMAD' or 'MAD II') became applicable in Ireland and across the European Union on 3 July 2016. The new regime replaces the previous Market Abuse Directive (2003/6/EC).

In Ireland, the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016)(2016 Regulations) is the Irish statutory instrument transposing CSMAD (and elements of MAR including the delegated acts) into Irish law. It replaces the previous Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342 of 2005).

The Central Bank of Ireland is the single administrative competent authority for the purposes of Irish market abuse law, as provided under the 2016 Regulations. The Securities and Markets Supervision Division of the Central Bank of Ireland is responsible for the competent authority functions arising from MAR, CSMAD and the 2016 Regulations.

The Central Bank of Ireland has issued revised Market Abuse Rules and Guidance on "Market Abuse Regulatory Framework", updated to align with MAR and the implementation of the new Market Abuse Regime.

The introduction of MAR and CSMAD forms part of the European regulatory reform agenda for financial services, aimed at ensuring greater transparency and market integrity.

- The new Market Abuse Regime strengthens the legal framework underpinning the function of detecting, sanctioning and deterring market abuse. It extends its scope to apply to new markets, new trading platforms and new behaviours and to cover a broader range of financial instruments. It contains prohibitions for insider dealing, market manipulation and unlawful disclosure of inside information and provisions to prevent and detect these.
- MAR introduces a number of changes including a broadening of the scope of legislation to include trading platforms, such as Multilateral Trading Facilities (MTFs), and Over the Counter (OTC)

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trades, including in derivatives. Other changes include additional notification requirements in relation to suspicious activity, delay in the disclosure of inside information, managers' transactions and enhanced requirements regarding the preparation and maintenance of insider lists and the handling of inside information.

- The Market Abuse Directive introduces minimum rules for criminal sanctions for market abuse and widens the range of activities which constitute an offence, to include, for example, inciting, aiding and abetting the commission of certain market abuse offences.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA publishes Final Report on MiFID II Guidelines on cross-selling practices

On 22 December 2015, the European Securities and Markets Authority (ESMA) published the Final Report on guidelines on cross-selling practices.

The primary purpose of these guidelines is to establish a coherent and effective approach in the supervision of firms by competent authorities which will contribute to the enhancement of investor protection across Member States. The guidelines will therefore help to clarify the expected standard of conduct and organisational arrangements for those firms engaged in cross-selling practices in order to mitigate any associated investor detriment.

These Guidelines are currently due to come into effect on 3 January 2017 but their final effective date will correspond with the effective date of MiFID II.

Final Report – ESMA Guidelines on Alternative Performance Measures

In Markets Update Issue 4 of 2015, the Central Bank highlighted the publication by ESMA of the Final Report- ESMA Guidelines on Alternative Performance Measures on 30 June 2015. The Central Bank would like to

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remind issuers and persons responsible for the prospectus that these guidelines are effective from 3 July 2016.

The aim of the guidelines is to encourage European issuers to publish transparent, unbiased and comparable information on their financial performance in order to provide users with a comprehensive understanding of their performance.

MiFID practices for firms selling financial instruments subject to the BRRD resolution regime

ESMA published on 2 June 2016 a Statement reminding banks and investment firms of their responsibility to act in their clients' best interests when selling bail-in-able financial instruments. New Banking Recovery and Resolution Directive rules in force since January 2016 mean firms are likely to issue a significant amount of potentially loss-bearing instruments to fulfil their obligations and ESMA is concerned investors – in particular retail investors - are unaware of the risks they may face when buying these instruments.

Q&A on the provisions of CFDs and other speculative products to retail investors under MiFID

ESMA published on 1 June 2016 an updated version of its Questions and Answers Relating to the provision of CFDs and other speculative products to retail investors under MiFID.

ESMA issues Q&A on MAR implementation

On 30 May 2016, the European Securities and Markets Authority (ESMA) issued Question and Answers (Q&A) regarding the implementation of the Market Abuse Regulation (MAR).

The MAR Q&A provides common answers to question regarding practical issues regarding the implementation of the new MAR regime. This Q&A clarifies the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions.

Q&As are an important tool to promote common supervisory approaches and practices in the application of MAR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities, their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the MAR requirements.
Note: You can request information, publications or documents referenced in this Markets Update by emailing webadmin@centralbank.ie.

The Market Abuse Regulation (MAR) aims at enhancing market integrity and investor protection. MAR updates and strengthens the existing MAD framework, which will be repealed when MAR applies as of 3 July 2016, by extending its scope to new markets and trading strategies and by introducing new requirements. The implementation of the MAR will result in an EU-wide market abuse regime.

ESMA issues technical standards on indirect clients

On 26 May 2016, the European Securities and Markets Authority (ESMA) issued two final draft regulatory technical standards (RTS) on indirect clearing under the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR) respectively. The draft RTS clarify provisions of indirect clearing arrangements for OTC and exchange-traded derivatives and help to ensure consistency and that an appropriate level of protection for indirect clients exists.

The draft RTS provide provisions on the following key points:

- Default management: in order to take into account that there can be a conflict of law between EU regulation and certain national insolvency regimes, the draft RTS propose an obligation of means, i.e. relying on having appropriate default procedures and committing to trigger them;
- Choice of account structures to be offered to indirect clients: the draft RTS provide a choice of possible account structures that reflect the current practice in the OTC derivative and the exchange traded derivative markets in terms of level of segregation. Furthermore, the number of accounts required has been simplified to minimise the operational burden for market participants; and
- Long chains: the draft RTS, under certain conditions, allow indirect clearing chains that are longer than the standard chains of four entities.

ESMA has sent its draft RTS on indirect clients for endorsement to the European Commission which has three months to accept or reject them. This is followed by a non-objection period by the European Parliament and Council.

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Background

The publication of today's final draft RTS follows a public consultation conducted end-2015. In general, EMIR introduced a clearing obligation for certain OTC derivative contracts. MiFIR extended the scope of the clearing obligation to all derivative transactions concluded on a regulated market. This means that the vast majority of derivative transactions will be cleared. Counterparties will clear their transactions by becoming a clearing member itself, by becoming a client of a clearing member or by establishing an indirect clearing arrangement with a clearing member.

ESMA clarifies the reporting of reference data under MAR from 3 July 2016

On 25 May 2016, the European Securities and Markets Authority (ESMA) issued a Communication clarifying the reporting of reference data under the Market Abuse Regulation (MAR).

Following the agreed later implementation of the Markets in Financial Instruments Directive II (MiFID II) and Regulation (MiFIR), some of the MAR provisions will be aligned to the new MiFID II timelines.

The agreement on MIFID II provides for postponement of the application date of certain provisions of MAR, in particular the Article 4 thereof until the same date. Specifically, the requirements set out under Article 4(2) and (3) will apply from 3 January 2018, whilst the application date of the requirement in Article 4(1) remains 3 July 2016.

ESMA proposes to amend draft MiFIR standard on transaction reporting

On 4th May 2016, the European Securities and Markets Authority (ESMA) published a request for amending its draft Regulatory Technical Standards (RTS) on transaction reporting (RTS 22) under the Markets in Financial Instruments Regulation (MiFIR).

The RTS 22 were submitted to the Commission on 28 September 2015. ESMA acknowledges the need to amend RTS 22 due to an unintended omission in the final stage of drafting the RTS.

The amendment introduced by ESMA relates to the list of instances that are not considered to be reportable transactions for the purpose of Article 26 of MiFIR. In particular, the amendment ensures that investment firms do

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not submit transaction reports for transfers of collateral, which would be costly and bring no supervisory benefit.

The necessary amendment has been submitted to the European Commission (EC). ESMA anticipates that the amendment will be taken into account in the context of the EC's endorsement of the draft RTS 22.

ESMA publishes responses to the DP on draft RTS and ITS under SFTR

On 3rd May 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Discussion Paper on draft RTS and ITS under the Securities Financing Transaction Regulation (SFTR).

ESMA amends MiFID II standards on non-equity transparency and position limits

On 2nd May 2016, the European Securities and Markets Authority (ESMA) issued two Opinions proposing amendments to its draft Regulatory Technical Standards (RTSs) under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR).

ESMA proposes to revise the RTS on non-equity transparency – which includes requirements in respect of bonds, structured finance products, emission allowances and derivatives – and the RTS on the methodology for the calculation and application of position limits for commodity derivatives. The Opinions were produced in response to proposed amendments by the European Commission to these draft RTSs.

Phase-in regime for non-equity transparency

MiFID II will extend transparency requirements to non-equity products, the implementation of which is detailed in ESMA's draft RTS. While overall supportive of the approach taken in the draft RTS, on 20 April 2016 the Commission requested ESMA to phase-in the application of certain parts of this new transparency regime to mitigate possible liquidity risks to bond markets. Under the phased-in approach, initially less demanding transparency requirements would be applied. These would be gradually strengthened over a period of four years until they reach the level of transparency initially proposed by ESMA. Consequently, significantly fewer instruments than initially proposed would be subject to the real-time transparency regime at the start of MiFID II.

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Under the Commission's proposal, the RTS would only specify the criteria applicable for the first stage of the phase-in and ESMA would conduct a yearly liquidity assessment. In the case of a favourable liquidity assessment, the transparency regime of the RTS would be strengthened by applying the regular legislative procedure for changing an RTS. Overall, ESMA supports the more cautious transparency regime as suggested by the Commission. However, ESMA proposes a different phase-in procedure. The Commission procedure for a regular RTS change risks to result in no meaningful improvement of transparency for many non-equity instruments, which would run contrary to the objective stated in MiFIR to strengthen transparency and improve the functioning of the internal market. In addition, it creates legal uncertainty and is burdensome for all parties involved. Therefore, ESMA is proposing an automatic phase-in, with all the stages already prescribed in the RTS. This automated phase-in would be accompanied by an annual liquidity assessment by ESMA and the RTS would be amended in case of significantly negative impacts on liquidity.

Finally, to ensure that also newly issued corporate and covered bonds are subject to a more cautious transparency regime, the ESMA Opinion proposes to adjust the liquidity status of newly issued corporate and covered bonds by increasing the issuance size thresholds.

RTS on position limits for commodity derivatives

MiFID II will introduce position limits, or caps on the number of commodity contracts that can be held, to commodity derivatives which will need to be set by national regulators. In order to ensure a harmonised approach to applying such limits, ESMA's draft RTS provides a methodology for calculating those limits on commodity derivatives traded on trading venues and economically equivalent OTC contracts. While overall supportive of the approach taken in the RTS, the European Commission asked ESMA to consider a number of amendments for:

- commodity derivatives with an agricultural underlying;
- the methodology in cases where deliverable supply and open interest of a contract differ significantly; and
- defining which contracts which are traded OTC only could be considered as economically equivalent to contracts traded on-venue.

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ESMA is supportive of most of the changes proposed by the Commission and understands the concerns about speculation and possible impacts on food prices. Therefore, ESMA proposes to lower the position limits for derivatives with foodstuffs as an underlying to 2.5%. In addition, ESMA suggests that in circumstances where deliverable supply and open interest diverge significantly, the other months' position limits should be adjusted accordingly. Finally, the definition of contracts traded "OTC only" has been slightly widened in order to prevent circumventions of the position limits regime by trading OTC.

In September 2015, ESMA submitted 28 draft RTSs under MiFID II/ MiFIR for endorsement to the Commission. On 20 April 2016, the Commission has asked ESMA to amend three RTSs, notably on non-equity transparency, position limits and ancillary activities. ESMA has sent today its two Opinions on non-equity transparency and position limits to the Commission which has to decide whether or not endorse the proposed changes. An Opinion on the third RTS on ancillary activities is currently being finalised by ESMA and will be issued later this month.

ESMA publishes responses to the Consultation on MAR Guidelines

On 27th April 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on draft guidelines on the Market Abuse Regulation (MAR).

ESMA announces Open Hearing on MAR Guidelines

On 20th April 2016, the European Securities and Markets Authority (ESMA) held an open hearing on its Consultation Paper published on 30 March 2016 on draft Guidelines to be issued by ESMA under the remit of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (MAR).

ESMA adds Credit Derivatives to its Public Register on EMIR

On 19th April 2016, the European Securities and Markets Authority (ESMA) published an update of its Public Register for the Clearing Obligation. Today's update concerns the addition of credit derivatives, notably for iTraxx main and iTraxx crossover contracts, to the clearing obligation. The public register lists the derivatives that have to be centrally cleared under the European Markets Infrastructure Regulation (EMIR). Credit derivatives will have to be centrally cleared following the publication

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of the relevant EMIR technical standard in the Official Journal of the European Union.

ESMA announces EU-wide stress tests for CCPs

On 14th April 2016, the European Securities and Markets Authority (ESMA) announced the publication of its first EU-wide stress test exercise regarding Central Counterparties (CCPs) on 29 April 2016.

ESMA is mandated to conduct stress tests of CCPs under the European Markets Infrastructure Regulation (EMIR). The stress test assesses the resilience and safety of the European CCP sector and aims to identify possible vulnerabilities.

Steven Maijoor, ESMA Chair, said:

"CCPs offer significant benefits to the market and play a key role in making derivatives markets safer. CCPs are also highly interconnected – both with financial institutions and markets – and the increasing volumes cleared through CCPs make them even more important for the financial system. Therefore, it is essential to test the sufficiency of their resources, not only individually but also at an EU- wide level. These stress tests are a crucial supervisory tool to ensure the sector is safe and resilient to shocks."

Scope of ESMA's CCP stress tests

ESMA, in cooperation with National Competent Authorities (NCAs) and the European Systemic Risk Board (ESRB), test the resilience of European CCPs by exposing them to adverse market scenarios. ESMA's stress test focuses on the counterparty credit risk that CCPs would face as a result of multiple clearing member (CM) defaults and simultaneous market price shocks.

ESMA issues opinions on DK pension schemes to be exempt from central clearing under EMIR

On 13th April 2016, the European Securities and Markets Authority (ESMA) issued a set of opinions regarding the exemption of 3 DK pension schemes from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant

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competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains opinions on 3 DK-based pension schemes where the Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by the Finanstilsynet, ESMA will update the list of the types of entities/ arrangements that have been exempted.

ESMA publishes Opinion on EU framework for loan origination by investment funds

On 12th April 2016, the European Securities and Markets Authority (ESMA) published an Opinion addressed to the European Parliament, the Council and the Commission on the components necessary for a common European framework which applies to loan origination by investment funds.

The Opinion, which forms part of ESMA's ongoing work on the Capital Markets Union, sets out ESMA's views on elements such as the authorisation of loan-originating funds and their managers, eligible investors, organisational requirements and leverage.

Loan origination means that an investment fund provides credit (originates a loan), acting as a sole or a primary lender, to borrowers such as small or medium enterprises (SMEs). As such, this activity represents an alternative form of market-based financing.

Several EU Member States have set up bespoke frameworks for loan origination by funds domiciled in their country which means that funds operating cross-border need to comply with different requirements. The European Commission therefore asked ESMA to provide input on the key issues in view of the establishment of a common EU approach.

ESMA publishes responses to the Consultation on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation

On 7th April 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation.

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ESMA Q&As on CFDs

On 8th April 2016, ESMA published Q&As on CFDs.

ESMA finds room for improvement in national supervision of investment advice to retail clients

On 7th April 2016, the European Securities and Markets Authority (ESMA) published a peer review on how national regulators assess compliance with MiFID's suitability requirements when firms provide investment advice to retail clients.

These requirements are designed to ensure that firms only recommend suitable investment products, based on the investor's profile.

Overall, ESMA found that while most national regulators have a good understanding of the investment advice market in their jurisdictions and regularly review the distribution methods and business models of investment firms, there is scope to adopt more proactive supervisory approaches and strengthen enforcement activities.

Steven Maijoor, ESMA Chair, said:

"The MiFID suitability requirements are a key component of Europe's investor protection framework and ESMA expects national competent authorities to be vigilant in ensuring firms comply with these important requirements.

"Supervisory convergence is high on ESMA's agenda, as we stated in our 2016-2020 strategy, and the findings from this review show the importance of this work."

Main findings

ESMA found that:

- National regulators have a good understanding of the types of distribution methods used in their jurisdictions and where the boundary between investment advice and information lies. However, limited supervision was performed to verify whether clients are receiving investment advice in practice or have the perception that they are receiving advice.

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- Most regulators do not perform supervision which is targeted at the particular behaviour of a firm or group of firms as part of a specific suitability project.
- Most regulators stated they used a wide range of tools to monitor the main aspects of advice suitability but only a limited number of regulators provided specific information on the tools they use to supervise compliance with the suitability requirements;
- Enforcement action, such as imposing fines or placing restrictions on firms' activities, was rarely taken. Many regulators considered their supervisory approach alone was sufficient to address issues; and
- In many cases, regulators could improve how they publicly communicate with stakeholders on their supervision and enforcement activities and findings.

Next steps

The findings of this peer review will help ESMA identify those areas where there is a need for further supervisory convergence among regulators.

ESAs finalise Key Information Documents for retail investors in the EU

On 7th April 2016, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) finalised its proposal for regulatory technical standards (RTS) on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

The proposed KIDs provide retail investors for the first time across the EU with simple and comparable information on investment products in the banking, insurance and securities sectors. A 3-page document increases the transparency and comparability of information about the risks, performance and costs of these products. The new rules will contribute to enhancing the confidence and strengthening the protection of EU consumers of banking, insurance and securities products.

Gabriel Bernardino, Chairman of EIOPA and current Chairman of the Joint Committee, said:

"*These new rules prepared jointly by the ESAs are a major step forward for consumers. They are an innovative and pioneering new approach to risk*,

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performance and cost disclosures that we believe lays a strong foundation for the future. Now, for the first time, consumers can easily compare different products and make informed investment decisions fitting their particular needs.

The ESAs reached a significant milestone in managing to transform high-level EU legislative principles into a set of practical cross-sectoral rules. On behalf of the Joint Committee, I would like to thank all the stakeholders for their extensive contributions throughout the entire process."

The new rules benefited from the public feedback received by the ESAs on two Discussion Papers and a Consultation Paper, from extensive consumer testing, which was facilitated by the European Commission across a sample of Member States, and from a consultative expert group.

The new rules address the content and presentation of the KIDs and include:

- a common mandatory 3-page template for the KID, covering the texts and layouts to be used (see Annexes I, III, V and VII of the Report);
- a summary risk indicator of seven classes for the risk and reward section of the KID;
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs;
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios;
- costs presentation, including the figures that must be calculated and the format to be used for these i.e. in both cash and percentage terms;
- specific layouts and contents for the KID for products offering multiple options that cannot effectively be covered in three pages;
- rules on revision and republication of the KID, to be done at least each year; and
- rules on providing the KID sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

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The new rules have been submitted to the European Commission for endorsement. They will come into force on the 31 December 2016.

ESMA publishes Discussion Paper on UCITS share classes

On 6th April 2016, the European Securities and Markets Authority (ESMA) published a discussion paper on UCITS share classes (the DP).

The Undertakings for Collective Investment in Transferable Securities (UCITS) Directive recognises the possibility for UCITS to offer different share classes to investors but it does not prescribe whether, and to what extent, share classes of a given UCITS can differ from one another. ESMA has identified diverging national practices in Europe regarding the types of share class that are permitted and therefore proposes establishing a common regulatory framework for share classes in the EU.

The DP describes the nature of share classes, the reasons for their existence and the key elements of share classes. It builds on the feedback received from ESMA's first discussion paper on this topic, published in December 2014, which proposed providing actual examples of share classes deemed compatible and non-compatible with the UCITS framework. In this DP, ESMA puts forward a revised, principles-based approach.

ESMA is seeking feedback from all stakeholders.

Next steps

The consultation closes on 6 June 2016. ESMA expects to take further steps on UCITS share classes by the end of 2016.

ESMA updates its Q&A document on prospectus related issues

On 6th April 2016, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues.

The Q&A includes two new questions and answers on the capitalisation and indebtedness table and the validity of the base prospectus.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 5th April 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD). The Q&A includes a new question and answer on notification requirements relating to additional investment in existing Alternative Investment Funds (AIFs).

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA publishes updated UCITS Q&A

On 5th April 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS). The Q&A includes a new question and answer on UCITS investment in UCITS feeder funds.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS and its implementing measures.

ESMA issues amended rules for access, aggregation and comparison of data across trade repositories

On 5th April 2016, the European Securities and Markets Authority (ESMA) published amended regulatory technical standards (RTS) implementing the European Market Infrastructure Regulation (EMIR).

The amended RTS deal with the access, aggregation and comparison of data across trade repositories.

In order to ensure higher quality of data and to enhance the access to data by authorities and allow for the comparability and aggregation of data across trade repositories, ESMA proposes the following amendments to its RTS:

- standardised output format of the TR data, based on international ISO standards, allowing comparison and aggregation across TRs;
- minimum types of queries that need to be available for the authorities;

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- standardised and secure data exchange, based on ISO standards, between TRs and authorities;
- standardised frequencies for the provision of direct and immediate access to TR data; and
- use of secure machine-to-machine connection and of data encryption protocols.

ESMA is aligning the implementation date of the amended RTS with the implementation date of the amended reporting rules under Article 9 EMIR which were submitted to the EC on 13 November 2015.

EMIR: ESMA proposes one-day margin period of risk for CCP client accounts

On 5th April 2016, the European Securities and Markets Authority (ESMA) sent its amended regulatory technical standards (RTS) under the European Market Infrastructure Regulation (EMIR) for endorsement to the European Commission. The RTS detail the margin period of risk (MPOR) for CCP client accounts, e.g. the amount of initial margins collected by a CCP. The amended RTS would allow EU-based CCPs to margin on a one-day MPOR basis.

The amended draft RTS reduces from two-day to one-day the MPOR for gross omnibus accounts and individual segregated accounts for exchange traded derivatives and securities. Following the US equivalence decision by the European Commission, the amended RTS would provide a level playing field between European and US CCPs of one-day MPOR. The client account structures together with the conditions that they need to respect for the CCPs to margin on a one-day MPOR basis ensure a sufficient level of protection to the CCPs and a greater protection for clients.

MiFID II – ESMA: no need to temporarily exclude ETDs from open access to trading venues and CCPs

On 4th April 2016, the European Securities and Markets Authority (ESMA) saw no need to temporarily exclude exchange-traded derivatives (ETDs) from non-discriminatory access to central counterparties (CCPs) and trading venues, which will be introduced by the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). MiFIR requires ESMA to assess whether ETDs should be exempted for a period of 30 months from the non-discriminatory access provisions.

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ESMA's analysis found that open access to ETDs does not create undue risks to the overall stability and orderly functioning of European financial markets. As potential risks relating to open access are already addressed by the legislative frameworks of MiFID II, MiFIR and EMIR – the European Markets Infrastructure Regulation – ESMA proposed to the European Parliament and Council not to introduce an ETD specific phase-in regarding the access provisions of MiFID II.

Steven Maijoor, ESMA Chair, stated:

"Trading venues and CCPs are important market infrastructures and crucial for well-functioning EU capital markets. Strengthening competition and choice between venues and CCPs is an important step to further the integration of the EU's capital markets. The open access provisions of MiFID II will help to achieve these goals for all instruments without creating undue risks to stability."

MiFIR introduces a regime for open and non-discriminatory access to CCPs and trading venues. These provisions cover:

- transferable securities;
- money market instruments; and
- ETDs.

This means that trading venues can clear their trades at the CCP of their choice and CCPs can access trade feeds from trading venues. Trading venues and CCPs may, however, deny access under certain circumstances as well as National Competent Authorities (NCAs) may refuse access to a particular CCP or trading venue. This is the case where granting such access would require an interoperability agreement for ETDs, or threaten the smooth and orderly functioning of the market – in particular due to liquidity fragmentation – or affect systemic risk.

In September 2015, ESMA has already submitted draft regulatory technical standards to the Commission further specifying the conditions under which access may be denied, the conditions under which access must be permitted and the conditions under which access will threaten the smooth and orderly functioning of the market.

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ESMA updates its EMIR Q&A

On 4th April 2016, the European Securities and Markets Authority (ESMA) published an update of its Questions and Answers (Q&A) document regarding the implementation of the European Market Infrastructure Regulation (EMIR).

The updated document includes a new Q&A regarding the population of the "Clearing obligation" field in the trade reports. In particular, this Q&A explains how the description of the field should be interpreted, how it should be populated during the frontloading period and how long the counterparties are allowed to report value "X" (standing for "not available").

ESMA publishes updated Q&A on the Market Abuse Directive "MAD"

On 1st April 2016, the European Securities and Markets Authority (ESMA) published an updated Questions and Answers (Q&A) on the common operation of the Market Abuse Directive "MAD".

The purpose of this document is to promote convergent implementation and application of the market abuse regime by providing responses to specific issues raised by the general public, market participants or competent authorities. The content of this document is aimed at competent authorities to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on existing market abuse requirements, rather than creating an extra layer of requirements.

ESMA publishes UCITS remuneration guidelines

On 31st March 2016, the European Securities and Markets Authority (ESMA) published its final Guidelines on sound remuneration policies under the UCITS Directive and AIFMD. ESMA has also written to the European Commission, European Council and European Parliament on the proportionality principle and remuneration rules in the financial sector.

ESMA consults on future MAR list of information regarding commodity and spot markets

On 30th March 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft guidelines under the Market Abuse Regulation (MAR).

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ESMA is seeking views on its proposed non-exhaustive indicative list of information expected or required to be published on commodity derivatives markets or spot markets for the purposes of determining inside information regarding commodity derivatives and of triggering the prohibitions for insider dealing.

Under MAR, inside information in relation to commodity derivatives must relate to either the commodity derivatives themselves or to the related spot commodity contract. However, there is a wide variety of commodities markets and commodity derivatives markets which may require distinguishing between types of information specific to these markets. Therefore, ESMA is giving further consideration to the scope of the instruments or products concerned.

ESMA will consider all comments received by 20 May 2016.

European Banking Authority (EBA)

ESMA Guidelines and Recommendations

EBA – consultation on asset encumbrance under CRR

On 13 May 2016, the European Banking Authority (EBA) launched a consultation on draft Regulatory Technical Standards (RTS) on the disclosure of encumbered and unencumbered assets for the provision of transparent and harmonised information on the topic, as laid down in the Capital Requirements Regulation (CRR). These draft RTS, which build on the EBA Guidelines on the same topic, detail the disclosure requirements and provide additional information. The consultation runs until 25 July 2016.

EBA consults on draft amending standards on CVA proxy spread

On 6th April 2016, the European Banking Authority (EBA) launched a public consultation on draft amending Regulatory Technical Standards (RTS) on credit valuation adjustment (CVA) proxy spread.

The Consultation will run until 6 July 2016.

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Markets Update

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Markets Update Issue 4 2016

Welcome to Issue 4 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

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Central Bank of Ireland

Securities Markets Regulation

Market Abuse Regulation

Applicable from 3 July 2016.

The new Market Abuse Regime, which consists of the Market Abuse Regulation and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU or 'CSMAD' or 'MAD II') became applicable in Ireland and across the European Union on 3 July 2016. The new regime replaces the previous Market Abuse Directive.

In Ireland, the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016)(2016 Regulations) is the Irish statutory instrument transposing CSMAD (and elements of MAR including the delegated acts) into Irish law. It replaces the previous Market Abuse (Directive 2003/6/EC) Regulations (S.I. 342 of 2005).

The Central Bank of Ireland is the single administrative competent authority for the purposes of Irish market abuse law, as provided under the

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2016 Regulations. The Securities and Markets Supervision Division of the Central Bank of Ireland is responsible for the competent authority functions arising from MAR, CSMAD and the 2016 Regulations.

The Central Bank of Ireland has issued revised Market Abuse Rules and Guidance on "Market Abuse Regulatory Framework, updated to align with MAR and the implementation of the new Market Abuse Regime.

The introduction of MAR and CSMAD forms part of the European regulatory reform agenda for financial services, aimed at ensuring greater transparency and market integrity.

The new Market Abuse Regime strengthens the legal framework underpinning the function of detecting, sanctioning and deterring markets. It extends its scope to apply to new markets, new trading platforms and new behaviours and to cover a broader range of financial instruments. It contains prohibitions for insider dealing, market manipulation and unlawful disclosure of inside information and provisions to prevent and detect these.

MAR introduces a number of changes including a broadening of the scope of legislation to include trading platforms, such as Multilateral Trading Facilities (MTFs), and Over the Counter (OTC) trades, including in derivatives. Other changes include additional notification requirements in relation to suspicious activity, delay in the disclosure of inside information, managers' transactions and enhanced requirements regarding the preparation and maintenance of insider lists and the handling of inside information.

The Market Abuse Directive introduces minimum rules for criminal sanctions for market abuse and widens the range of activities which constitute an offence, to include, for example, inciting, aiding and abetting the commission of certain market abuse offences.

Central Bank Consultation Papers of Interest

CP100: Consultation of Risk Assessment and Capital Planning for Fund Administrators

The Central Bank has today, 4 July 2016, published its feedback statement on CP100 Consultation on Risk Assessment and Capital Planning for Fund. This summarises the responses received along with the Central Bank's comments and decisions

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CP101: Consultation on a Capital Requirement Framework for Market Operators

The Central Bank has today, 4 July 2016, published its feedback statement on CP101 Consultation on a Capital Requirement Framework for Market Operators. This summarises the responses received along with the Central Bank's comments and decisions.

European Securities and Markets Authority (ESMA)

Securities Markets

ESMA Guidelines on Alternative Performance Measures effective 3 July 2016

The ESMA Guidelines on Alternative Performance Measures (the "APM Guidelines") (Reference: ESMA/2015/1415) which apply to alternative performance measures ("APMs") disclosed by issuers or persons responsible for the prospectus when publishing regulated information or prospectuses came into effect on 3 July 2016.

For the purpose of the APM Guidelines an APM is understood as a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework. The APM Guidelines are aimed at promoting the usefulness and transparency of APMs included in prospectuses or regulated information. Regulated information means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under the Transparency Directive, under the Market Abuse Regulation, or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive. Examples of regulated information include management reports disclosed to the market in accordance with the Transparency Directive and disclosures issued under the requirements of article 17 of the Market Abuse Regulation, such as ad-hoc disclosures including financial earnings results.

Adherence to the APM Guidelines will improve the comparability, reliability and/or comprehensibility of APMs. The Central Bank of Ireland

has incorporated the APM Guidelines into its supervisory practices and expects issuers or persons responsible for the prospectus to comply with them.

ESMA Guidelines and Recommendations

ESMA appoints new Securities and Markets Stakeholder Group

On 1 July 2016, the European Securities and Markets Authority (ESMA) published the new list of members of its Securities and Markets Stakeholder Group (SMSG) following its approval by its Board of Supervisors. The selected individuals begin a 2½ year term on 1 July 2016 and will replace the group whose mandate expired on 30 June 2016.

The new SMSG will be composed of 30 individuals drawn from across 13 Member States and representing ESMA's key stakeholder constituencies – financial market participants (10), employee representatives (2), consumer representatives (6), users of financial services (3), small and medium sized enterprises (2) and academics (7). The new SMSG will feature 27 new members. A number of the incoming members have served in the previous SMSG. The SMSG was established according to ESMA's founding regulation and facilitates consultation between ESMA and its key financial market stakeholders on its work. The SMSG provides ESMA with opinions and advice on its policy work and must be consulted on technical standards and guidelines and recommendations. Additionally, it can inform ESMA of any inconsistent application of European Union law as well as inconsistent supervisory practices in Member States.

ESMA publishes responses received to its consultation on Guidelines on CSDR

On 1 July 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Consultation Paper on Guidelines on participant default rules and procedures under CSDR.

European Supervisory Authorities plan to issue Q&As on PRIIPS

On 1 July 2016, the Joint Committee of the three European Supervisory Authorities (ESAs) – EBA, EIOPA and ESMA – published a letter to the European Parliament and European Council on the supervisory

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convergence work by the ESAs in relation to the draft regulatory technical standards on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

ESMA – peer review on securities regulators' approval of prospectuses

On 30 June 2016, the European Securities and Markets Authority (ESMA) published a peer review on the efficiency and effectiveness of EU national securities markets regulators' approval of prospectuses, the disclosure documents prepared by issuers when they want to market their securities to EU investors. Overall, ESMA found that, while national regulators were in general sufficiently resourced and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

ESMA issues opinions on Danish pension scheme to be exempt from central clearing under EMIR

On 30 June 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains an opinion on one pension scheme where the Danish Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by Finanstilsynet, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA identifies scope for greater EU harmonisation in prospectuses approval

On 30 June 2016, the European Securities and Markets Authority (ESMA) published a peer review on the efficiency and effectiveness of

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European Union (EU) national securities markets regulators' approval of prospectuses, the disclosure documents prepared by issuers when they want to market their securities to EU investors.

Overall, ESMA found that, while national regulators were in general sufficiently resourced and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

Steven Maijoor, ESMA Chair, said:

"The Prospectus Directive is an important pillar of the single financial market: it helps firms access capital markets across the EU by setting a common format and content for prospectuses and introducing an EU-wide passport.

ESMA has assessed how the EU's single rulebook on prospectuses is applied in practice by national regulators as part of our supervisory convergence work. The findings of this peer review will help us identify practices which could benefit from further harmonisation to help deliver a truly single market."

Main findings

ESMA's review covered a two-year period from January 2013 to December 2014. The main findings were:

- Prospectuses are often complex and may therefore be difficult for investors to understand, according to external stakeholders interviewed by ESMA. Main concerns include their length, the format of the summary section, and the amount and manner in which information is incorporated by reference;
- National regulators have different interpretations of certain disclosure requirements which would benefit from further harmonisation, as would the way in which national regulators look at risk factors associated with issuers and their securities;
- Approval times vary substantially among national regulators, however, the driving factors largely fall outside national regulators' responsibilities and include:

    - quality of the first draft they receive;

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- issuers' response times to queries;
- the quality of those responses; and
- the complexity of issuers' circumstances.

Nevertheless, ESMA also identified scope for further improving the efficiency of regulators' approval procedures; and

The seasonal nature of prospectus approvals raised some concerns that national regulators could struggle to handle high volumes of documents while maintaining rigorous scrutiny during peak periods.

Next steps

The findings of this peer review will feed into ESMA's supervisory convergence work which is one of its main priorities for 2016-2020. ESMA intends to take a closer look, among other things, at the intelligibility of prospectuses, the disclosure of risk factors and the interpretation of certain requirements.

The EU's Prospectus Directive and Regulation is currently being revised as part of the European Commission's Capital Markets Union and may address some of the legislative clarifications identified during the peer review as appropriate.

ESMA publishes the responses to its Discussion Paper on UCITS share classes

On 23 June 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Discussion Paper on UCITS share classes.

ESMA issues Opinion on inside information disclosure under the Market Abuse Regulation

On 17 June 2016, the European Securities and Markets Authority (ESMA) issued an Opinion in response to a notification by the European Commission about intended changes on a draft Implementing Technical Standard (ITS) on the disclosure of inside information under the Market Abuse Regulation.

The ITS specify the technical means for disclosure of inside information by issuers of financial instruments and emission allowance market participants (EAMP) and require that information is explicitly marked as inside

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information and actively disseminated to the media. The Commission proposes that for EAMPs who are also subject to disclosure obligations under the Regulation on Energy Markets Integrity and Transparency (REMIT), compliance with REMIT's disclosure requirements is sufficient for disclosing inside information under MAR.

In its Opinion, ESMA does not agree with the amendments proposed by the Commission. ESMA considers that the two requirements that the Commission is intending to eliminate (the marking and dissemination of inside information) while reducing slightly the costs of the disclosing companies, would put investors at a disadvantage.

ESMA updates list of recognised third-country CCPs

On 14 June 2016, the European Securities and Markets Authority (ESMA) updated its list of recognised central counterparties (CCPs) based in third countries. Today's update concerns the recognition of the US Chicago Mercantile Exchange Inc. (CME).

The European Markets Infrastructure Regulation (EMIR) requires third-country CCPs to be recognised by ESMA in order to operate in the European Union.

ESMA issues Technical Standards for European Long-Term Investment Funds

On 8 June 2016, the European Securities and Markets Authority (ESMA) published its Final Report and draft Regulatory Technical Standards (RTS) for Regulation (EU) 2015/760, the European Long-Term Investment Fund Regulation (ELTIF).

The ELTIF Regulation allows investors to put money into companies and infrastructure projects for the long term and aims to increase the amount of non-bank finance available for companies investing in the EU's real economy. An ELTIF is a type of Alternative Investment Fund (AIF) which must be managed by an authorised AIF Manager under the AIFM Directive. By complying with the additional ELTIF requirements, the fund managers will have access to investors across the EU, including retail investors (subject to specific conditions).

ESMA's key proposals include:

- The criteria to determine the circumstances in which financial derivatives are used solely for hedging purposes, based on those set

out in the 'CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS on risk measurements';

- The life of an ELTIF should be determined with reference to the individual asset within the ELTIF portfolio which has the longest investment horizon;
- A non-exhaustive list of the types of market risk ELTIF managers should take into account when assessing the market for potential buyers ahead of the disposal of their asset;
- The criteria for the valuation of the ELTIF assets ahead of their divestment which specify the timing of the valuation and allow for valuations made under the AIFM to be taken into account; and
- A grandfathering provision, whereby ELTIFs have one year after the RTS come into force to comply with these rules.

Following discussion with the European Commission ESMA is postponing the delivery of its ELTIF RTS on the cost disclosure information which must be included in the ELTIF's prospectus, in order to take into account the work being undertaken on cost disclosures for PRIIPs.

ESMA and CFTC to cooperate on CCPs

On 6 June 2016, the European Securities and Markets Authority (ESMA) and the US Commodity Futures Trading Commission (CFTC) established a memorandum of understanding (MoU) under the European Markets Infrastructure Regulation (EMIR).

The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs which are established in US and authorised or recognised by the CFTC and which have applied for EU recognition under EMIR.

EMIR provides for cooperation arrangements between ESMA and the relevant non-EU authorities whose legal and supervisory framework for CCPs have been deemed equivalent to EMIR by the European Commission.

The MoU is effective as of 02 June 2016.

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ESMA updates its EMIR Q&A

On 6 June 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes new answers in relation to the clearing obligation, specifically about the self-categorisation that is necessary in order to establish which counterparties belong to which categories. The Q&A also provides clarifications on how counterparties should handle the situation where some of their counterparties have not provided the information on the category they belong to.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA publishes updated AIFMD Q&A

On 3 June 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes a new question and answer on requirements regarding the domicile of EU Alternative Investment Funds (AIFs) which are marketed in the home Member State of the AIF Manager, as well as a new question and answer relating to the marketing of EU feeder AIFs which have a non-EU master AIF. The Q&A also contains two new questions and answers regarding the influence that committed capital can have on the calculation of the total value of assets under management and additional own funds.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

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International Organization of Securities Commissions (IOSCO)

IOSCO Outlines its Priorities Regarding Data Gaps in the Asset Management Industry

On 22nd June 2016, the Board of the International Organization of Securities Commissions (IOSCO) issued a public statement outlining its priorities regarding data gaps in the asset management industry.

Implementation monitoring of the PFMI: Third update to level 1 assessment report

On 28th June 2016, the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published the third update to the level 1 assessments of implementation monitoring of the Principles for financial market infrastructures (PFMI).

CPMI-IOSCO release guidance on cyber resilience for financial market infrastructures

On 29th June 2016, the Committee on Payments and Market Infrastructures (CPMI) and the Board of the International Organization of Securities Commissions (IOSCO) released the final report Guidance on cyber resilience for financial market infrastructures ("Cyber Guidance"). This Cyber Guidance is the first internationally agreed guidance on cyber security for the financial industry. It has been developed against the backdrop of a rising number of cyber-attacks against the financial sector and in a context where attacks are becoming increasingly sophisticated.

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Markets Update

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Markets Update Issue 5 2016

Welcome to Issue 5 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

UCITS

UCITS Q&A - Fourteenth Edition Published

On 12 September 2016, the Central Bank published a fourteenth Edition of the UCITS Q&A. The new questions added are: ID 1067 – ID 1069 (Umbrella cash accounts) and ID 1070 – ID 1072 (Accounts).

AIFMD

AIFMD Q&A - Twentieth Edition Published

On 12 September 2016, the Central Bank published a twentieth edition of the AIFMD Q&A. The new questions added are: ID1108 – ID 1110 (Umbrella cash accounts).

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Securities Markets

First Edition of Market Abuse Regulatory Framework Q&A

The Market Abuse Regulatory Framework Q&A sets out answers to queries that may arise in relation to the Market Abuse Regime which became applicable in Ireland on 3 July 2016. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered.

On 12 September 2016, the Central Bank published the First Edition of the **Market Abuse Regulatory Framework Q&A.** The questions included are:

- ID 1001 (PDMRs and PCAs use the relevant issuer's ONR account in order to notify the Central Bank of transactions under Article 19 of MAR);
- ID 1002 (multiple issuers and ONR accounts);
- ID 1003 (delegation of application of access to the ONR);
- ID 1004 (delegation lf notification requirements); and
- ID 1005 (notifications and threshold specifications)

Prospectus Regulations – New Final Terms Submission Process

The Central Bank anticipates that its new Final Terms submission process will commence on 20 September 2016. Confirmation of this being the implementation date will be communicated in advance of the process going live.

The new submission process will require the submission of Final Terms by means of a secure web based system, the Online Reporting System (ONR).

In order to submit Final Terms via ONR, log in access will be required which must be applied for in advance of the implementation date. To apply, please provide the following information to markets@centralbank.ie:

1) Name and Address of submitting entity;

2) Name and Job Title of Administrator User in the submitting entity i.e., person responsible for

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managing access to the ONR in the submitting entity;

3) Phone number and email address of Administrator User.

The Central Bank strongly encourages submitters of Final Terms to apply for log in access to ONR at their earliest convenience. Login name and password to access ONR will be provided in due course once this information is received and is in order.

Final Terms will not be able to be submitted without access to ONR and it is therefore the responsibility of issuers to ensure that they, or their agent, can submit Final Terms via ONR to avoid the possibility of being in breach of the Prospectus Regulations. If a submitter currently has an ONR login and an Administrator User, a new login will not be required. The Central Bank should be notified of the log in details and System Administrator and it will revert with details of when the "Final Terms Return" will be deployed for access on ONR. The Central Bank wishes to thank those who have applied for access to ONR; it will shortly be in touch in this regard.

Please note that on the commencement of the new Final Terms Submission Process via ONR expected on 20 September 2016, it will no longer be possible to submit Final Terms via email.

The Central Bank's Prospectus Handbook will be updated shortly to coincide with the change to the process for submission of final terms and some other minor technical changes.

The other minor changes include:

- amending references to regulations 30, 31 and 33 of the Prospectus Regulation (as these regulations were deleted by the Regulatory Technical Standards 2016/301 for approval and publication of prospectuses and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 and inserting a definition of the Regulatory Technical Standards 2016/301; and
- correcting some cross references and making other minor drafting changes.

Contact: markets@centralbank.ie or corporatefinancepolicy@centralbank.ie

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MiFID Firms

Department of Finance publishes Public Consultation on Transposition of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR)

On 6 July 2016 the Department of Finance published its Public Consultation on Transposition of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). The consultation period will run from 07 July to 21 September, a period of 11 weeks.

Funds

Central Bank of Ireland's Guidance on Directors' Time Commitments - Q & A

On 8 September the Central Bank issued a letter to all fund service providers and fund boards providing an update on the director time commitments thematic review. Extensive engagement with directors following the 2015 review has delivered significant progress in reducing concentrations of directorships. The industry letter highlights this and areas for directors to consider when reviewing their capacity to fulfil their directorship roles.

European Banking Authority (EBA)

Central Bank confirms compliance with EBA guidelines on sound remuneration policies

The Central Bank has confirmed compliance with the EBA guidelines on sound remuneration policies, in line with European and Irish law.

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European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA issues opinion on Danish pension scheme to be exempt from central clearing under EMIR

On 3 August 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Some pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

Today's document published by ESMA contains an opinion on one pension scheme where Finanstilsynet is the competent authority for securities markets. After the exemptions are granted by Finanstilsynet, ESMA will publish the list of the types of entities/ arrangements that have been exempted.

ESMA issues overview of European prospectus activity

On 28 July 2016, the European Securities and Markets Authority (ESMA) published statistical data on the number of prospectuses approved and passported by the National Competent Authorities (NCAs) of the European Economic Area (EEA) within the EU prospectus regime.

The report shows that the number of prospectus approvals across the EEA has slightly decreased in 2015 compared to 2014, continuing the overall decreasing trend since 2009 as a result of the impact of the financial crisis. Almost three quarters of prospectuses approved in 2015 related to non-equity securities, slightly more than half of which were drawn up as base prospectuses. Passporting activity was relatively stable between 2014 and

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2015 with ten countries accounting for the bulk of prospectuses passported across the EEA.

The prospectus report is published by ESMA on an annual basis and presenting prospectus activity from January to December 2015. The report also includes information about prospectus approval trends since 2006, content and structure of approved prospectuses and prospectus passporting activity.

ESMA updates its EMIR Q&A

On 27 July 2016, the European Securities and Markets Authority (ESMA) issued an update of its Q&A on practical questions regarding the European Markets Infrastructure Regulation (EMIR).

The updated Q&A includes a new answer in relation to reporting of trades cleared by a clearing house which is not a CCP under the EMIR definition. The Q&A clarifies that such entities should not be identified in the "CCP ID" field of EMIR reports. Also, in the case of trades that are executed in an anonymised market and cleared by a clearing house, the counterparty executing the transaction should request the trading venue or the clearing house that matches the counterparties to disclose the identity of the other counterparty before the reporting deadline.

The purpose of this document is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of this document is aimed at competent authorities under the Regulation to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR.

ESMA finalises standards on sanctions and measures under MAR

On 26 July 2016, the European Securities and Markets Authority (ESMA) issued final implementing technical standards (ITS) regarding sanctions and measures which will implement the Market Abuse Regulation (MAR).

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The ITS prescribe how national competent authorities (NCAs) should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their Member States under MAR. The Regulation provides for two types of submission of information, which are as follows:

- NCAs shall provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR as well as regarding administrative and criminal investigations undertaken in accordance with those articles; and
- Administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.

The ESMA has submitted the final ITS for endorsement to the European Commission which is followed by a non-objections period by the European Parliament and Council respectively.

ESMA issues warning on sale of speculative products to retail investors

On 25 July 2016, the European Securities and Markets Authority (ESMA) issued a warning about the sale of contracts for differences (CFDs), binary options and other speculative products to retail investors who are unaware of the risks associated with these products, and also highlights the regulatory action taken in relation to several Cyprus-based investment firms.

The warning comes as ESMA and a number of national supervisors have observed an increase in the marketing of these products, often through aggressive practices, and at the same time, a rise in the number of complaints from retail investors who have suffered significant losses.

Steven Maijoor, ESMA Chair, said:

“ESMA and national regulators still have serious concerns that firms are selling these products, which are inherently risky and speculative, to people who do not understand them.

“These products are often advertised to the retail mass market via online platforms and sold without investment advice. When these products are marketed and sold in an aggressive manner or when firms otherwise fail to

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comply with their regulatory obligations, this creates the conditions for retail investors to suffer significant detriment, including unexpected losses.

"ESMA and national regulators are committed to working together to ensure investors receive proper protection across the EU."

Since mid-2015, ESMA has coordinated a group of national regulators focused on issues relating to a number of Cyprus-based investment firms that sell CFDs and binary options throughout Europe. The Cyprus Securities and Exchange Commission (CySEC) has imposed fines on, or reached settlement agreements with, eight firms - Depaho, Reliantco, IronFX Global, WGM Services, Pegase Capital, Rodeler, Banc de Binary and Ouroboros Derivatives Trading - totalling EUR 2,072,000. It has also suspended the license of Pegase Capital. CySEC's work is ongoing in this area.

ESMA is also promoting common supervisory approaches in relation to the sale of speculative products to retail investors so that the same standards are applied across the EU. It has recently published an updated Questions and Answers document which clarifies how rules relating to these products should be implemented. The latest update provides guidance on the information to be provided to clients and potential clients about speculative products, and the appropriateness assessment required when firms offer these products to retail clients.

ESMA publishes updated Q&A on CFDs and other speculative products

On 25 July 2016, the European Securities and Markets Authority (ESMA) published an updated version of its question and answer document (Q&A) to on the application of the Markets in Financial Instruments Directive (MiFID) to the marketing and sale of financial contracts for difference (CFDs) and other speculative products to retail clients (such as binary options and rolling spot forex).

The Q&A includes 9 new questions and answers in sections 3 to 5, which address the following topics:

- The information provided to clients and potential clients about how CFDs and other speculative products work and the risks involved, including marketing communications;

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- The assessment of a retail client or potential retail client's ability to understand the risks involved in order to determine whether trading in CFDs or other speculative products is appropriate for them; and
- Factors for supervisors to consider when firms offering CFDs or other speculative products to retail clients enter into certain commercial arrangements with other authorised firms.

The complexity of CFDs and other speculative products means it may be difficult for the majority of retail investors to understand the risks involved although they are widely advertised to the retail mass market by a number of firms, often via online platforms. There is also a considerable degree of cross-border activity across Europe in these products. Many incompetent authorities have concerns about the protection of investors in this area and the purpose of the Q&A is to promote common supervisory approaches and practices in the application of MiFID and its implementing measures to key aspects that are relevant when CFDs and other speculative products are sold to retail clients.

Next steps

ESMA will continue to work on this topic and aims to publish further Q&As in the coming months. ESMA will also consider the need for any further work, in the medium term, in light of MiFID II requirements.

ESMA publishes updated UCITS Q&A

On 19 July 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes one new question and answer on the impact of the European Market Infrastructure Regulation (EMIR) on the UCITS framework, regarding the valuation of centrally cleared OTC derivatives by UCITS management companies.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 19 July 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes one new question and answer on the impact of the European Market Infrastructure Regulation (EMIR) on the AIFMD framework, regarding the valuation of centrally cleared OTC derivatives by AIF managers.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA advises on extension of funds passport to 12 non-EU countries

On 19 July 2016, the European Securities and Markets Authority (ESMA) published its Advice in relation to the application of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds (AIFs) in twelve countries: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland, and the United States.

Currently, non-EU AIFMs and AIFs must comply with each EU country's national regime when they market funds in that country. ESMA's Advice relates to the possible extension of the passport, which is presently only available to EU entities, to non-EU AIFMs and AIFs so that they could market and manage funds throughout the EU.

For each country, ESMA assessed whether there were significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk which would impede the application of the AIFMD passport.

According to ESMA's advice:

- there are no significant obstacles impeding the application of the AIFMD passport to Canada, Guernsey, Japan, Jersey and Switzerland;

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- if ESMA considers the assessment only in relation to AIFs, there are no significant obstacles impeding the application of the AIFMD passport to AIFs in **Hong Kong** and **Singapore**. However, ESMA notes that both Hong Kong and Singapore operate regimes that facilitate the access of UCITS from only certain EU Member States to retail investors in their territories.
- there are no significant obstacles regarding market disruption and obstacles to competition impeding the application of the AIFMD passport to **Australia**, provided the Australian Securities and Investment Committee (ASIC) extends to all EU Member States the 'class order relief', currently available only to some EU Member States, from some requirements of the Australian regulatory framework;
- there were no significant obstacles regarding investor protection and the monitoring of systemic risk which would impede the application of the AIFMD passport to **the United States** (US). With respect to the competition and market disruption criteria, ESMA considers there is no significant obstacle for funds marketed by managers to professional investors which do not involve any public offering. However, ESMA considers that in the case of funds marketed by managers to professional investors which do involve a public offering, a potential extension of the AIFMD passport to the US risks an un-level playing field between EU and non-EU AIFMs. The market access conditions which would apply to these US funds in the EU under an AIFMD passport would be different from, and potentially less onerous than, the market access conditions applicable to EU funds in the US and marketed by managers involving a public offering. ESMA suggests, therefore, that the EU institutions consider options to mitigate this risk;
- For **Bermuda** and the **Cayman Islands,** ESMA cannot give definitive Advice with respect to the criteria on investor protection and effectiveness of enforcement since both countries are in the process of implementing new regulatory regimes and the assessment will need to take into account the final rules in place. For the **Isle of Man** ESMA finds that the absence of an AIFMD-like regime makes it difficult to assess whether the investor protection criterion is met.

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ESMA published its first set of Advice on the application of the passport to six non-EU countries (Guernsey, Hong Kong, Jersey, Switzerland, Singapore and the US) in July 2015. The European Commission (Commission) subsequently asked ESMA to assess a further six countries and to provide more details on the capacity of non-EU supervisory authorities and their track record in ensuring effective enforcement, including those non-EU countries which ESMA looked at in its first set of advice. The Commission also asked ESMA to provide data on the expected inflows of funds by type and size into the EU from the different non-EU countries.

This Advice, required under the AIFMD, will now be considered by the European Commission, Parliament and Council.

ESMA seeking commodity derivatives experts to join consultative industry group

On 18 July 2016, the European Securities and Markets Authority (ESMA) published a call for candidates to newly constitute a Consultative Working Group (CWG) for the ESMA Commodity Derivatives Task Force (CDTF) as the two-year-term of the existing CWG has recently expired.

The CWG is mainly expected to advise and assist the CDTF on technical standards such as guidelines, Q&As and other guidance in relation to relevant legislative provisions within the area of competence of the CDTF; and advise and assist the Task Force in assessing the potential impact of proposed technical standards and guidelines.

The CDTF undertakes ESMA's work relating to commodity financial markets. In terms of markets covered, the following ones form part of the work of the CDTF: energy (gas, oil, coal and electricity); metals; agricultural and soft commodities; and others, such as freight. In terms of products, the whole range of instruments, from traditional futures to exotic derivatives, are within the remit of the CDTF. It is responsible for preparing ESMA technical standards, opinions, guidelines, Q&As and other guidance related to the implementation of the MiFID II framework. The CDTF is also tasked with preparing advice to the European Commission and to other ESMA groups on commodity derivatives related matters.

Interested experts are asked to send their application to ESMA by 29 August 2016.

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ESMA consults on asset segregation and custody services under AIFMD and UCITS

On 15 July 2016, the European Securities and Markets Authority (ESMA) published a Call for Evidence on Asset Segregation and Custody Services under the Alternative Investment Fund Managers Directive (AIFMD) and the Directive on Undertakings for **Collective Investment in Transferable Securities (UCITS** Directive**).**

ESMA first consulted on asset segregation under the AIFMD in December 2014. However, given the majority of respondents objected to the two options on which ESMA consulted, coupled with the fact that the new UCITS V Directive has recently introduced asset segregation requirements which are broadly aligned to the AIFMD, ESMA has decided to carry out a further consultation. This call for evidence has a broader scope than the initial consultation as it also covers asset segregation rules under the UCITS Directive and any residual uncertainty on how the depositary delegation rules should apply to central securities depositaries.

ESMA is particularly interested in gathering views on any asset segregation regime which ensures assets are clearly identifiable as belonging to the AIF or UCITS, and which provides investors with robust protection by avoiding ownership of the assets being called into question in the event of insolvency.

The consultation closes on 23 September 2016.

In responding to this call for evidence, please follow the instructions given in the reply form document published with this CP.

ESMA updates its Q&A document on prospectus related issues

On 15 July 2016, the European Securities and Markets Authority (ESMA) updated its Questions and Answers document (Q&A) on prospectus related issues. The Q&A included two new questions and answers on advertisements and Alternative Performance Measures.

The purpose of the Q&A document was to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

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ESMA updates its MAR Q&As

On 13 July 2016, the European Securities and Markets Authority (ESMA) updated its Questions & Answers (Q&As) regarding the implementation of the Market Abuse Regulation (MAR).

The updated Q&As include new answers regarding managers' transactions.

ESMA readies MAR guidelines on market soundings and delayed disclosure of inside information

On 13 July 2016, the European Securities and Markets Authority (ESMA) issued final guidelines clarifying the implementation of the Market Abuse Regulation (MAR) for persons receiving market soundings and on delayed disclosure of inside information.

The new market abuse regime strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviors. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

"Market sounding" are a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. ESMA's final guidelines detail:

- *the factors* that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
- *the steps* that such persons are to take if inside information has been disclosed to them; and
- *the records* that such persons are to maintain in order to demonstrate that they have complied with MAR.

On legitimate interests of issuers to delay disclosure of inside information and on situations in which the delay of disclosure is likely to mislead the public, ESMA's guidelines provide a non-exhaustive and indicative list of:

- legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information; and

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- situations in which delay of disclosure is likely to mislead the public.

Within two months of the issuance of the different language versions of these guidelines, national competent authority (NCA) will have to confirm whether or not they intend to comply with those Guidelines. In the event that a NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons.

ESMA consults on the validation and review of CRAs' methodologies guidelines

On 13 July 2016, the European Securities and Markets Authority (ESMA) published a Consultation Paper on guidelines on the validation and review of Credit Rating Agencies' (CRAs) methodologies (the CP).

The purpose of the draft guidelines was to clarify ESMA's expectations regarding how CRAs should validate and review their methodologies. ESMA aimed to achieve a consistent application of validation and review measures across CRAs through the demonstration of the discriminatory power, predictive power and historical robustness of their methodologies. The draft guidelines also identified the measures that CRAs should implement when validating and reviewing their methodologies with limited quantitative evidence.

The CP was accompanied by a Feedback Statement which outlined the main issues that were highlighted in response to the Discussion Paper on these guidelines published in December 2015. The initial proposals were not substantially altered and the consultation focused on the changes that have been made in response to the feedback received.

ESMA was seeking feedback from users of credit ratings and CRAs.

The consultation closed on 22 August 2016.

ESMA consults on proposed central clearing delay for small financial counterparties

On 13th July 2016, the European Securities and Markets Authority (ESMA) published a consultation paper proposing to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under the European Market Infrastructure Regulation (EMIR).

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ESMA proposed to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations.

The consultation closes on 5 September 2016 and ESMA will consider all received with a view to publishing a final report by the end of 2016.

ESMA publishes translations of its Guidelines on cross-selling practices

On 11th July 2016, the European Securities and Markets Authority (ESMA) published translations of its Guidelines on cross-selling practices. The purpose of these Guidelines was to ensure a common, uniform and consistent application of these definitions.

ESMA issues opinions on Swedish pension scheme to be exempt from central clearing under EMIR

On 7th July 2016, the European Securities and Markets Authority (ESMA) issued an opinion regarding the exemption of a Swedish pension scheme from the obligation to centrally clear OTC derivative contracts under the European Market Infrastructure Regulation (EMIR).

Pension scheme arrangements meeting certain criteria were granted a transitional exemption from the clearing obligation under EMIR. Some pensions schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

The document published by ESMA contained an opinion on one pension scheme where Finansinspektionen was the competent authority for securities markets. After the exemptions are granted by Finansinspektionen, ESMA published the list of the types of entities/ arrangements that have been exempted.

ESMA issues positive opinion on short selling ban by Italian CONSOB

On 6th July 2016, the European Securities and Markets Authority (ESMA) issued an agreeing to an emergency short selling prohibition, for a

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period of 90 calendar days, by the Commissione Nazionale per le Società e la Borsa (CONSOB) on net short positions in Banca Monte dei Pascha di Siena spa (BMPS) shares under the Short Selling Regulation.

The measure entered into force at 00:00:01 CEST on 7 July 2016 and will remain in place until 24:00:00 (CET) on 5 October 2016. It temporarily prohibits transactions in any shares, either directly or through related instruments and irrespectively of the venue or market in which the transactions leading to those positions are conducted. The measure does not apply to trading in index-related instruments.

The short selling measure applies to any natural or legal person, irrespective of their country of residence, and does not exempt market making activities.

ESMA considers that the current circumstances related to BMPS constitute adverse events or developments which constitute a serious threat to market confidence in Italy and that the proposed measure is appropriate and proportionate to address the threat to Italian financial markets.

International Organization of Securities Commission (IOSCO)

IOSCO Good Practice for CIS Fees and Expenses seeks to enhance market efficiency

On 25th August 2016, the Board of the International Organization of Securities Commission published the final report on Good Practice for Fees and Expenses of Collective Investment Schemes (CIS), which aims to identify common international examples of good practice that can be applied to CIS fees and expenses.

IOSCO consults on good practices for the termination of investment funds in an effort to increase investor protection

On 18th August 2016, The Board of the International Organization of Securities Commission published a consultation report on Good Practices for the Termination of Investment Funds, which proposes a set of good practices on the voluntary termination process for investment funds.

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Reports from CPMI-IOSCO advance regulatory agenda on central counterparties

On 16th August 2016, the Committee on Payments and Market Infrastructures (CPMI) and the Board of International Organization of Securities Commissions (IOSCO) published reports that were aimed at enhancing the resilience of central counterparties (CCPs), an important movement towards completing the regulatory agenda for central clearing laid out after the financial crisis.

European Banking Authority (EBA)

MiFID Firms

EBA provides input based on the Single Rulebook Q&As to the European Commission's CRR-CRD review

On 5 August 2016, the European Banking Authority (EBA) published the outcome of a review of its Single Rulebook Q&As, which provides an overview of possible errors, inconsistencies as well as fundamental issues in relation to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD) observed via the Single Rulebook Q&A tool managed by the EBA.

The input provided to the Commission includes both a general assessment as well as more specific findings, which are further detailed in twelve annexes grouped by topics of the CRR-CRD texts covered in the legislative review.

The EBA will use the outcome of its review to continue its technical discussions and collaboration with the EU Commission services in the context of the CRR/CRD review.

EBA launches data collection to support the new prudential framework for investment firms

On 15 July 2016, the European Banking Authority (EBA) launched a data collection aimed at supporting the response to the European Commission's Call for Advice on a new prudential framework for MiFID (Markets in

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Financial Instruments Directive) investment firms, which should be less complex, more risk sensitive and more proportionate than the current regime.

For the purpose of this data collection, the EBA published templates and instructions which are addressed to MiFID investment firms and to UCITS/AIFMD (Undertakings for Collective Investment in Transferable Securities/Alternative Investment Fund Managers Directive) firms that conduct MiFID activities or services. The templates should be filled in and submitted to the respective Competent Authorities by Friday, 7 October 2016 at the latest.

This data collection follows the Call for Advice received from the European Commission on 13 June 2016 and also addresses its request regarding the application of proportionality in the area of remuneration.

The EBA will launch an ad-hoc data collection for commodity dealers at a later stage.

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Banc Ceannais na hÉireann
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Markets Update Issue 6 2016

Welcome to Issue 6 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

Securities Markets

Updated Transparency Rules

The Central Bank's Transparency Rules were updated effective 4 November 2016. The Transparency Rules set out procedural and administrative rules and guidance in respect of the Transparency (Directive 2004/109/EC) Regulations 2007 as amended.

The changes made are to further reflect the transposition of Directive 2013/50/EU. The Rules no longer provide exemptions from the requirement to notify issuers of significant share-holdings arising through stock-lending or stock-borrowing agreements.

Contact: corporatefinancepollicy@centralbank.ie

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MiFID Firms

EBA seeks views on a new prudential regime for investment firms

On 4 November 2016 the EBA launched a consultation on the design of a new prudential regime for investment firms, which is specifically tailored to investment firms' different business models and inherent risks. This consultation will assist in developing a response to the European Commission's call for technical from the EBA, issued on 13 June 2016, on appropriate prudential requirements for investment firms. The aim of this work is to develop a single, harmonised set of requirements that are reasonably simple, proportionate and more relevant to the nature of investment business than the current regime. The consultation runs until 2 February 2017 and is addressed to all investment firms that are not systemic and bank-like.

The EBA recommends a framework focused on the risks that investment firms pose to customers and to market integrity. The EBA is proposing that the ongoing capital requirements shall be calculated based on capital factors (K-factors) that are attributed to one of these two broad types of risks. As a result, firms that pose more risk to customers and markets should get higher capital requirements than those who pose less risk, and firms that pose similar risk to customers and markets but with more own exposure risk should hold more capital than those with less own exposure risk.

The Discussion Paper covers the most important aspects related to the new prudential requirements for investment firms, including three possible alternatives to set minimum liquidity requirements. All three alternatives aim at addressing the liquidity profile of investment firms in a more appropriate way than the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) set out under the CRR regime.

EBA recommends that only investment firms identified as GSIIs and OSIIs be subject to the full CRDIV/CRR

On 20 October 2016 the EBA responded to the European Commission's call for technical advice, issued on 13 June 2016, on the criteria to identify the categories of investment firms for which the prudential regime laid down in the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) is appropriate. In general, the EBA

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recommends that only those investment firms that are systemic and bank-like should remain subject to the full CRD/CRR regime and recommends that systemic and bank-like investment firms are identified as Global Systemically Important Institutions (GSIIs) and Other Systemically Important Institutions (OSIIs).

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID

On 11 October 2016, ESMA published a Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID and its implementing measures to certain key aspects that are relevant when CFDs and other speculative products are marketed and sold to retail clients.

ESMA Final Report on Guidelines on transaction reporting, order record keeping and clock synchronization under MiFID II

On 10 October 2016, ESMA published a Final Report on Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II. The Guidelines aim to provide guidance on how to fill transaction reports and comply with record keeping or clock synchronisation obligations. This document also contains the summary of responses received to the Consultation Paper issued in December 2015. As per the ESMA website, it should be noted that the regulatory technical standard (RTS) on the reporting of transactions to competent authorities is still under the scrutiny of the European Parliament and Council, thus the publication by ESMA of the Guidelines is without prejudice to the possible objection to that RTS.

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ESMA Q&A on MiFID II and MiFIR investor protection topics

On 10 October 2016, ESMA published a Q&A on MiFID II and MiFIR investor protection topics. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to investor protection topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

ESMA Consultation Paper on Guidelines on the calibration, publication and reporting of trading halts

On 6 October 2016, ESMA published a Consultation Paper on Guidelines on the calibration, publication and reporting of trading halts. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 6 December 2016. This Consultation Paper may be specifically of interest to trading venues, firms considering becoming data reporting services providers, investment firms, as well as wholesale and retail investors.

ESMA Consultation Paper on draft guidelines on MiFID II product governance requirements

On 5 October 2016, ESMA published a Consultation Paper on Draft guidelines on MiFID II product governance requirements. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 5 January 2017. This paper is addressed to investment firms and credit institutions performing investment services and activities and their staff, especially firms which manufacture financial instruments or structured deposits for sale to clients as well as the firms which distribute them.

ESMA Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments

On 3 October 2016, ESMA published a Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments. ESMA invites comments on all matters in the paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 5 December 2016. This Consultation

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Paper may be of particular interest for potential consolidated tape providers (CTPs), potential users of CTPs as well as trading venues and approved publication arrangements.

ESMA Q&A on the implementation of the double volume cap under MiFID II

On 3 October 2016, ESMA published Q&As on the implementation of the double volume cap under MiFID II. The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to transparency topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

ESMA Discussion Paper on the trading obligation for derivatives under MiFIR

On 20 September 2016, ESMA published a Discussion Paper on the trading obligation for derivatives under MIFIR. ESMA invited comments on all matters in the paper and in particular on the specific questions summarised in the Annex. ESMA will consider all comments received by 21 November 2016. Responses are sought from trading venues and from counterparties trading OTC derivatives that may become subject to the trading obligation.

European Banking Authority (EBA)

MiFID Firms

EBA Consultation on Guidelines on internal governance (revised)

On 28th October 2016, the European Banking Authority (EBA) launched today a public consultation on its revised Guidelines on internal governance. These draft Guidelines aim at further harmonising institutions' internal governance arrangements, processes and mechanisms across the EU, in line with the new requirements in this area introduced in the Capital Requirements Directive (CRD) and also taking into account the proportionality principle. The consultation runs until 28 January 2017.

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EBA Consultation on Joint ESMA EBA Guidelines on suitability of management body

On 28th October 2016, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) launched a consultation on Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders (the Guidelines). The draft Guidelines aim at further improving and harmonising suitability assessments within the EU financial sectors and so ensure sound governance arrangements in financial institutions.

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Markets Update Issue 7 2016

Welcome to Issue 7 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

MiFID Firms

Central Bank published its Feedback Statement in relation to Consultation Paper CP 97 - Consultation on Central Bank Investment Firms Regulation 2015

On 25 November 2016, the Central Bank published its Feedback Statement in relation to Consultation Paper CP 97 - Consultation on Central Bank Investment Firms Regulations 2015. The Central Bank Investment Firms Regulations will consolidate into one document the conditions and requirements which the Central Bank imposes on certain investment firms. The CP 97 Feedback Statement outlines the various representations made in response to CP97 and the Central Bank's intended policy approach in respect of those matters. The Central Bank intends to publish the Investment Firm Regulations and related Guidance in early 2017.

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AIFMD

Central Bank published a notice of intention to amend the requirements for loan origination Qualifying AIF

On 25 November 2016, the Central Bank published a notice of intention to amend the requirements for loan origination Qualifying AIF set out in the AIF Rulebook. The change outlined therein will come into effect from 3 January 2017 when the Central Bank will publish a revised AIF Rulebook.

AIFMD Q&A - Twenty-First Edition Published

On 25 November 2016, the Central Bank published the twenty-first edition of the AIFMD Q&A. A new question ID 1111 relating to pension scheme arrangements under EMIR is included.

Securities Markets

The Central Bank publishes the First Edition of a Transparency Regulatory Framework Q&A

On 25 November 2016, the Central Bank published the First Edition to of the Transparency Regulated Framework Q&A.

Contact: corporatefinancepollicy@centralbank.ie

Central Bank Consultation Papers of Interest

CP106: Consultation Paper on the Review of Minimum Competency Code 2011

The Central Bank published a Consultation Paper on the Review of the Minimum Competency Code 2011 (CP106) on 21 November 2016. Some of the proposed changes to the minimum competency standards incorporate knowledge and competence requirements set out in the ESMA Guidelines for the assessment of knowledge and competence.

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Speeches to Markets Industry

Address by Martin Moloney, Head of Markets Policy, Central Bank of Ireland at the IOSCO-FSI Seminar on Trading Book Issues and Market Infrastructure in Madrid

Address by Martin Moloney, Head of Markets Policy, Central Bank of Ireland at the IOSCO-FSI Seminar on Trading Book Issues and Market Infrastructure in Madrid.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA publishes updated UCITS Q&A

On 21 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes two new questions and answers on how investment limits should be applied where a UCITS wants to invest in an umbrella fund.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures.

ESMA publishes MiFID II Q&As on transparency and market structure topics

On 18 November 2016, the European Securities and Markets Authority (ESMA) published two Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR).

ESMA has published a new Q&A document on market structures which provides clarifications on the two following topics:

- data disaggregation; and,

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- the mandatory tick size regime.

ESMA has also updated its Q&A on transparency with two new questions which provide details regarding:

- article 4(7) of MiFIR, review of waivers granted in accordance with MiFID I; and,
- the procedure for granting a waiver from pre-trade transparency obligations for illiquid non-equity financial instruments.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of MiFID II/MiFIR and its implementing measures.

ESMA Chair says safeguarding investors is key to Capital Markets Union's success

On 17 November 2016, the European Securities and Markets Authority (ESMA) Chair, Steven Maijoor, gave a speech entitled "Safeguarding investors is key to ensuring the Capital Markets Union's success" at the Börse Stuttgart MiFID-Kongress, Germany.

ESMA Chair speaks on improving outcomes for investors in investment funds

On 17 November 2016, the European Securities and Markets Authority (ESMA) Chair, Steven Maijoor, gave a speech entitled "Safeguarding investors is key to ensuring the Capital Markets Union's success" at the Börse Stuttgart MiFID-Kongress, Germany.

ESMA responds to Commission's consultation on potential EU personal pension framework

On 16 November 2016, the European Securities and Markets Authority (ESMA) published its response to the European Commission's consultation on a potential EU personal pension framework as part of ESMA's ongoing work in relation to the Capital Markets Union initiative.

ESMA comments on a number of topics covered by the consultation: product characteristics of a possible EU personal pension product, information to policyholders and distribution rules.

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ESMA publishes updated AIFMD Q&A

On 16 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes two new questions and answers on the cross-border marketing of AIFs, clarifying issues around material changes of existing notifications, as well as two new questions and answers on the delegation of functions by an AIFM to AIFs or third parties.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA defines common supervisory approach for CCPs' service extensions and change of risk models

On 15 November 2016, the European Securities and Markets Authority (ESMA) issued an opinion defining a common supervisory approach for supervisors dealing with central counterparties (CCPs) wishing to extend their existing authorisation or change their risk models under the European Market Infrastructure Regulation (EMIR).

The national competent authorities (NCAs) supervising the authorised CCP should follow some commonly agreed indicators to identify when a change is significant and seek the college's opinion on the project of extension of the services and activities and on the significant change of the risk models and parameters. The college is made up of European NCAs and ESMA.

ESMA now provides an opinion to NCAs for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union.

ESMA asks Commission to delay central clearing for small financial counterparties

On 14 November 2016, the European Securities and Markets Authority (ESMA) published its final report regarding the amended application of the clearing obligation that financial counterparties with a limited volume of activity in OTC derivatives need to comply with under the European Market Infrastructure Regulation (EMIR).

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Due to a range of reasons covered in the report, in particular relevant EU legislations being under review or finalisation, ESMA proposes to postpone the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity.

ESMA's report proposes to amend EMIR's Delegated Regulations on the clearing obligation in order to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations. ESMA is also proposing to align the three compliance dates for Category 3 firms in the Delegated Regulations regarding Interest Rate Swaps and Credit Default Swaps. The newly proposed compliance date would be 21 June 2019.

ESMA's final report was submitted to the European Commission for endorsement of the draft RTS presented in the Annex. From the date of submission, the European Commission should decide within three months whether or not to endorse the RTS.

The European Commission invites European Supervisory Authorities to amend PRIIPs rules and develop guidance

On 11 November 2016, the European Supervisory Authorities (ESAs) - the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA) – received a letter from the European Commission setting out the amendments it proposes to make to the draft regulatory technical standards (RTS) on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), accompanied by draft amended RTS.

The ESAs jointly submitted the draft RTS to the European Commission in April 2016 which was endorsed by the European Commission. The Council of the European Union raised no objections, however, the European Parliament rejected them on 14 September 2016. The European Commission considers that amendments to the RTS provisions on multi-option PRIIPs, performance scenarios and the comprehension alert are required to address the concerns expressed by the European Parliament.

The European Commission invites the ESAs to submit an Opinion on amending the RTS, based on the proposed amendments, within six weeks,

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and to develop guidance in line with the relevant provisions of the RTS on the practical application of credit risk mitigation factors for insurers.

The European Commission recently announced that it expects the PRIIPs rules to enter into force on 1 January 2018, instead of 1 January 2017.

ESMA updates MAR guidelines on market soundings

On 10 November 2016, the European Securities and Markets Authority (ESMA) re-issued the official translations of its final guidelines clarifying the implementation of the Market Abuse Regulation (MAR) for persons receiving market soundings.

Following a linguistic issue in the Polish translation, all 22 language versions are being re-published today which moves its legal application date to 10 January 2017. Today's publication triggers the period of two months within which national competent authorities subject to these guidelines have to notify ESMA whether or not they intend to comply with the guidelines. However, these updates do not concern the substance of the other guidelines which remains unchanged.

The new market abuse regime strengthens the existing market abuse framework by extending its scope to new markets, platforms and trading behaviors. It contains prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these.

ESMA consults on transparency rules for package orders under MiFID II

On 10 November 2016, the European Securities and Markets Authority (ESMA) opened a public consultation on draft regulatory technical standards (RTS) regarding the treatment of package orders under the amended Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). Overall, MiFID II aims at increasing market integrity, transparency and efficiency.

Package transactions are interlinked financial transactions comprising various instruments which firms execute jointly in order to reduce transaction costs and for risk management purposes. MiFIR's pre-trade transparency regime requires the disclosure of trading interest in all non-equity instruments. However, national competent authorities will be able to waive this requirement if certain conditions are met. Unless there is a

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liquid market for the package order as a whole, the amended MiFID II also allows to waive the pre-trade transparency obligation.

ESMA's draft RTS establish a methodology for determining those package orders for which there is a liquid market in the European Union as a whole, and which consequently may not be waived from pre-trade transparency requirements. The methodology ESMA is proposing is based on qualitative criteria which allows ESMA to take the characteristics of packages into account which are standardised and frequently traded. Based on this methodology, the following package orders would be considered to have a liquid market as a whole:

- Orders where at least one component is subject to the *trading obligation* (under MiFIR) and where all other components are subject to the *clearing obligation* under the European Market Infrastructure Regulation (EMIR); and
- Orders that meet a set of general criteria (all components are standardised; all derivative components can be cleared) plus a set of asset-class specific criteria.

Asset-class specific criteria have been developed for the following asset classes:

- interest rate derivatives;
- equity derivatives;
- credit derivatives; and
- commodity derivatives.

Packages in asset classes for which no asset-class specific criteria exist are considered not to have a liquid market as a whole.

ESMA prepares for MIFID II Systematic Internaliser regime

On 4 November 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers (Q&A) document on the application of MiFID II/ MiFIR which clarifies when ESMA will publish the first set of data needed to implement the Systematic Internaliser (SI) regime and the date by when firms must comply with the SI regime for the first time.

The key dates are:

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- 1 August 2018: ESMA will publish information on the total number and the volume of transactions executed in the European Union for the first time by 1 August 2018, covering the period from 3 January 2018 to 30 June 2018.
- 1 September 2018: investment firms must undertake their first assessment by and, where appropriate, comply with the SI obligations (including notifying their National Competent Authority) by 1 September 2018.
- Quarterly updates: for subsequent assessments, ESMA will publish data by the first calendar day of February, May, August and November. Investment firms are expected to perform the calculations and comply with the SI regime by the fifteenth calendar day of February, May, August and November.

Application date

The earliest mandatory deadline on which firms must comply with the SI regime, when necessary, is 1 September 2018 although MiFID II and MiFIR apply from 3 January 2018. However, ESMA stresses that investment firms can opt-in to the SI regime for all financial instruments from 3 January 2018 as a means of complying, for example, with the trading obligation for shares.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the MiFID II/ MiFIR and its implementing measures.

Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders

On 28 October 2016, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) launched a consultation on Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders (the Guidelines). The draft Guidelines aim at further improving and harmonising suitability assessments within the EU financial sectors and so ensure sound governance arrangements in financial institutions.

Weaknesses in corporate governance are widely acknowledged to have been one of the underlying causes of the financial crisis where inadequate

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oversight by, and challenge from, the management body in a number of credit institutions and investment firms contributed to excessive and imprudent risk-taking in the financial sector. In order to address those weaknesses, the EBA and ESMA have issued jointly these Guidelines in accordance with the new requirements introduced under the Capital Requirements Directive (CRD) and the Markets in Financial Instruments Directive (MiFID II).

The draft Guidelines:

- provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity, and independence of mind of members of the management body;
- require members of the management body to commit sufficient time to perform their duties and specify how the number of directorships held by members of the management body should be counted, for significant institutions;
- set out how different aspects of diversity, educational and professional background, age, gender and geographical provenance should be taken into account in the recruitment process; and
- highlight the importance of induction and training to ensure the initial and ongoing suitability of members of the management body, and call for institutions to establish training policies and to allocate appropriate financial and human resources to induction and training.

The consultation closes on 28 January 2017 and a public hearing in London will take place on 5 January 2017 from 14:00 to 17:00 UK time.

Legal basis and next steps

These draft Guidelines have been developed according to Article 91 (12) of Directive 2013/36/EU (CRD) and Article 9 of Directive 2014/65/EU.

These Guidelines take also into account the results of the EBA peer review of the Guidelines on the assessment of the suitability of members of the management body and key function holders of credit institutions, published on 22 November 2015.

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The joint Guidelines will apply to Competent Authorities across the EU, as well as to credit institutions and investment firms. Once the revised Guidelines are enforced, the previous EBA Guidelines on the assessment of the suitability of the management body and key function holders from 2012 will be repealed.

Competent Authorities across the EU will be expected to implement the Guidelines by mid-2017.

ESMA issues MiFIR reporting instructions

On 27 October 2016, the European Securities and Markets Authority (ESMA) issued detailed reporting introductions and XML schemas under its Financial Instruments Reference Data System (FIRDS). FIRDS covers the Markets in Financial Instruments Regulation (MiFIR) and the Market Abuse (MAR) requirements for reference data collection and publication, collection and processing of additional data to support the MiFIR transparency regime and suspensions coordination.

The FIRDS provides market participants with additional detailed guidance following the publication of ESMA's final guidelines regarding transaction reporting under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) and should assist firms in preparing their reporting obligations for the incoming regulations.

ESMA issues Q&As on the implementation of MAR

On 26 October 2016, the European Securities and Markets Authority (ESMA) issued a set of Questions and Answers (Q&As) regarding the implementation of the Market Abuse Regulation (MAR).

ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines. Today's Q&As include detailed answers on:

- Managers' transactions; and
- Investment recommendation and information recommending or suggesting an investment strategy

The purpose of this document is to promote common supervisory approaches and practices in the application of MAR and its implementing

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measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the MAR framework.

The content of this document is aimed at competent authorities to ensure that in their supervisory activities and their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on the content of the market abuse rules, rather than creating an extra layer of requirements.

ESMA publishes official translations of MAR guidelines

On 20 October 2016, the European Securities and Markets Authority (ESMA) published 22 language versions of two sets of guidelines under the Market Abuse Regulation (MAR).

ESMA has to translate guidelines into the 22 official languages of the European Union as the publication of the different language version trigger their national applications.

Today's translation cover the following MAR guidelines:

- MAR Guidelines on persons receiving market soundings (ESMA/2016/1477); and
- MAR Guidelines on delay in the disclosure of inside information (ESMA/2016/1478).

ESMA issues Guidelines on Remuneration Practices under UCITS and AIFMD

On 14 October 2016, the European Securities and Markets Authority (ESMA) published two sets of Guidelines: Guidelines on Sound Remuneration under UCITS (UCITS Remuneration Guidelines) and Guidelines on Sound Remuneration under the AIFMD (AIFMD Remuneration Guidelines).

UCITS Remuneration Guidelines

The UCITS Remuneration Guidelines provide clarity on the requirements under the UCITS Directive for management companies when establishing and applying a remuneration policy for key staff. The purpose of the Guidelines is to ensure a convergent application of these provisions and

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provide guidance on the governance of remuneration, requirements on risk alignment, and disclosure.

AIFMD Remuneration Guidelines

The AIFMD Remuneration Guidelines amend the current Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232). The amendment relates to the section of these Guidelines dealing with the application of the remuneration rules in a group context and is intended to acknowledge the potential outreach of the Capital Requirements Directive rules in a banking group.

ESMA published its final report on Guidelines on sound remuneration policies under the UCITS Directive and AIFMD in March of this year.

Next steps

National Competent Authorities (NCAs) must notify ESMA whether they comply or intend to comply with the Guidelines, with reasons for non-compliance, within two months. ESMA will publish a compliance table based on the responses from the NCAs.

The Guidelines apply from 1 January 2017 and have been translated into the 23 official languages of the all of the European Union.

ESMA publishes updated UCITS Q&A

On 12 October 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers (Q&A) document on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

The Q&A includes four new questions and answers on: regulated markets in Member States under the UCITS Directive, translation requirements in relation to the remuneration disclosure, reinvestment of cash collateral, and the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation (SFTR).

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures.

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ESMA publishes updated AIFMD Q&A

On 6 October 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document on the application of the Alternative Investment Fund Managers Directive (AIFMD).

The Q&A includes one new question and answer on the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation for Alternative Investment Fund managers.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA consults on requirements for the management of trading venues and reporting services providers

On 5 October 2016, the European Securities and Markets Authority (ESMA) issued a consultation paper on draft guidelines which will further detail the implementation of the Market in Financial Instruments Directive (MIFID II).

The guidelines provide draft provisions management bodies of market operators and data reporting services providers will have to apply once MiFID II has entered into force.

Those MiFID II requirements aim to ensure that the management body and each of its individual members are suitable to ensure sound and prudent management of the firms as well as exercise effective responsibility for the activities undertaken by those firms.

This consultation is closely linked to the consultation paper on Joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under CRD IV and MiFID II, which will be published shortly. The ESMA consultation is open for comments by 5 January 2017 with a view to finalising the guidelines and publishing a final report in the first half of 2017.

ESMA consults on product governance guidelines to safeguard investors

On 5 October 2016, the European Securities and Markets Authority (ESMA) opened a consultation on product governance guidelines under the

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Markets in Financial Instruments Directive (MiFID II) regarding the target market assessment by manufacturers and distributors of financial products.

The requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. These requirements cover arrangements for:

- firms to adopt when manufacturing products (product governance obligations for manufacturers); and
- firms to adopt when deciding the range of products and services they intend to offer to clients and when offering or recommending such products to clients (product governance obligations for distributors).

ESMA reports on shadow banking, leverage and pro-cyclicality

On 4 October 2016, the European Securities and Markets Authority (ESMA) issued a report on securities financing transactions (SFTs), leverage and pro-cyclicality in the EU's financial markets. ESMA's report assesses whether the use of SFTs leads to the build-up of leverage which is not yet addressed by existing regulation, how to tackle such build-up, and whether there is a need to take further measures to reduce its pro-cyclicality.

SFTs allow market participants to access secured financing. SFTs involve the temporary exchange of cash against securities, or securities against other securities – such as securities lending, repurchase transactions, buy-sell/ sell-buy back transactions, or margin lending transactions.

On the other hand, SFTs also contribute to the build-up of leverage in the financial system, which is relevant from a financial stability perspective. A leveraged financial system can be vulnerable to "runs", generate contagion risk and increase pro-cyclicality.

While remaining cautious when considering the introduction of new quantitative regulatory requirements on SFTs, ESMA recommends to:

- introduce the Financial Stability Board's (FSB) qualitative standards in the methodology used to calculate haircuts;

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- address the pro-cyclicality of collateral haircuts in central counterparties in the context of the European Market Infrastructure Regulation (EMIR) review;
- assess the possible extension of the FSB's scope for numerical haircut floors, in particular to government bonds, and the calibration of these floors using SFTR data which will become available in 2018; and
- assess pro-cyclicality and the potential need for further policy tools once sufficient data becomes available.

SFTR will introduce transparency, improve risk monitoring

To make the report, ESMA cooperated with the European Banking Authority (EBA) and the European Systemic Risk Board (ESRB), and relied on various sources of information. At this stage granular supervisory data are lacking, which will only become available once the SFT-Regulation (SFTR) data reporting obligation begins in 2018.

The SFTR aims to increase the transparency of shadow banking activities. It will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository. These details will include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

ESMA issues positive opinion on short selling ban by Italian CONSOB

On 4 October 2016, the European Securities and Markets Authority (ESMA) issued an opinion agreeing to extending an emergency short selling prohibition, for a period of 90 calendar days, by the Commissione Nazionale per le Società e la Borsa (CONSOB) on net short positions in Banca Monte dei Pascha di Siena spa (BMPS) shares under the Short Selling Regulation.

The measure is expected to enter into force at 00:00:01 CEST on 6 October 2016 and will remain in place until 24:00:00 (CET) on 5 January 2017. It temporarily prohibits transactions in any shares, either directly or through related instruments and irrespectively of the venue or market in which the transactions leading to those positions are conducted. The measure does not apply to trading in index-related instruments.

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The short selling measure applies to any natural or legal person, irrespective of their country of residence, and does not exempt market making activities.

ESMA considers that the current circumstances related to BMPS constitute adverse events or developments which constitute a serious threat to market confidence in Italy and that the proposed measure is appropriate and proportionate to address the threat to Italian financial markets.

ESMA issues final guidelines on commodity derivatives inside information

On 30 September 2016, the European Securities and Markets Authority (ESMA) issued final guidelines clarifying one element of the definition of inside information in relation to commodity derivatives under the Market Abuse Regulation (MAR). The new market abuse regime strengthens the existing market abuse framework. In particular, with regards to commodity derivatives, MAR is further specifying the definition of inside information as information that:

- relates directly or indirectly to such commodity derivatives or directly to the related spot commodity contract;
- meets the three conditions of the general definition of inside information in relation to financial instruments (namely being non-public, precise and price sensitive); and
- is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.

The mandate under MAR requires ESMA to issue guidelines on the last element of that definition on establishing a non-exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets. ESMA expects market participants, investors and regulators to take into account the list of examples provided in these guidelines for the assessment of whether information is inside information, noting though that the assessment should also be conducted against the other conditions of the definition not covered by these guidelines. These guidelines do not impose any additional information

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disclosure requirements, as the concept of "*required to be disclosed*" refers to existing or future disclosure requirements (for instance, under national law), independently of these guidelines.

Within two months of the issuance of the different language versions of these guidelines, national competent authority (NCA) will have to confirm whether or not they intend to comply with them. In the event that a NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons.

ESMA consults on future reporting rules for securities financing transactions

On 30 September 2016, the European Securities and Markets Authority (ESMA) issued a consultation paper on draft technical standards implementing the Securities Financing Transaction Regulation (SFTR), which aims to increase the transparency of shadow banking activities. Securities financing transactions (SFTs) are transactions where securities are used to borrow cash (or other higher investment-grade securities), or vice versa – this includes repurchase transactions, securities lending and sell/buy-back transactions.

The SFTR will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository. These details will include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

Steven Maijoor, ESMA Chair, said:

"Regulating securities financing is important as it will reduce financial stability risks from financial market activities, which so far only faced little to no regulation.

"The SFTR will provide transparency to regulators and investors on the use of SFTs, and will better allow to identify risks associated with collateral and its reuse."

ESMA is seeking stakeholder's views on its draft SFTR implementing measures. The key areas of the draft rules include:

- the procedure and criteria for the registration as a trade repository under the SFTR;

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- the use of internationally agreed reporting standards, the reporting logic and the main aspects of the structure and content of SFT reports;
- the requirements regarding transparency of data, data collection, aggregation and comparison; and
- the access levels for different competent authorities.

ESMA has developed its proposals on reporting of SFTs building on its experience with the European Market Infrastructure Regulation (EMIR), and other EU-wide reporting regimes in order to align reporting standards to the maximum extent possible.

In addition to the SFTR, ESMA is proposing certain amendments to the existing standards implementing EMIR. These amendments are drafted to ensure a level-playing-field for market participants with regards to registration and access rules.

Next steps

The consultation is open for feedback until 30 November 2016. ESMA will use the feedback received to finalise its draft technical standards which are to be submitted to the European Commission for endorsement by the end of Q1/beginning Q2 2017. Consequently, the finalised SFTR implementing measures would then be expected to become applicable from 2018.

ESMA updates list of recognised third-country CCPs

On 29 September 2016, the European Securities and Markets Authority (ESMA) has updated today its list of recognised central counterparties (CCPs) based in third countries. Today's update concerns the recognition of the US CCPs ICE Clear Credit LLC (ICC) and the Minneapolis Grain Exchange Inc. (MGEX).

The European Markets Infrastructure Regulation (EMIR) requires third-country CCPs to be recognised by ESMA in order to operate in the European Union.

ESMA publishes the responses to the Call for evidence on asset segregation

On 27 September 2016, the European Securities and Markets Authority (ESMA) published the responses received to the Call for evidence on asset segregation and custody services.

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ESMA sees risk outlook deteriorate for EU securities markets

On 30 August 2016, the European Securities and Markets Authority (ESMA) latest risk report has found that the overall assessment of risk levels in EU markets under its remit remains unchanged. Market and credit risks remain *very high* – the highest level – while liquidity and contagion risk remain *high*.

The risk outlook has deteriorated following the result of the UK referendum on EU membership. Market, liquidity and contagion risks may increase going forward, as political and event risks have intensified, and the macroeconomic environment may deteriorate. The deteriorating liquidity risk outlook reflects increased fund outflows following the referendum, leading to the suspension of redemptions in a number of open-ended funds holding UK commercial property. ESMA updated its risk outlook to reflect the outcome of the referendum.

The details are outlined in its Report on Trends, Risks and Vulnerabilities No. 2, 2016 (TRV) on European Union (EU) markets, which covers market developments from January to June 2016.

In the first part of the reporting period, key trends included high volatility in equity and commodity markets, reflecting valuation concerns, slower emerging markets growth and turmoil in the energy sector caused by falling oil prices. Volatile fund returns and a reassessment of credit risk premia also contributed to portfolio and investment fund outflows. Towards the end of the semester, the outcome of the UK EU referendum had a significant impact in foreign exchange and equity markets, while EU financial market infrastructures proved resilient.

The topical articles feature analyses around the following issues:

- Proxy advisors in the EU: Institutional investors increasingly make use of shareholder advice services. We provide an overview of the EU proxy advisory services market as part of ESMA's investor protection objective.
- Financial innovation scoreboard: ESMA uses a framework that provides a ranking relating product features to ESMA's objectives to prioritise which financial innovations require deeper analysis and potential policy responses.

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- Circuit breakers in the EU: a first-time overview provided on their use by EU trading venues, and one of the main findings is that circuit breakers may help to increase market quality.
- Corporate bond market liquidity in the EU: no systematic trends were observed in liquidity levels in the period analysed, but episodes of decreasing market liquidity were found when wider market conditions deteriorate.
- Synthetic leverage in the asset management industry: evidence suggests that reliance by investment funds on leverage built through the use of derivatives may be on the rise, with potential financial stability implications.

Next steps

ESMA, as part of its ongoing market surveillance, will update its report semi-annually, complemented by its quarterly Risk Dashboard. The results of the report have also been shared with the European Commission, Parliament and Council.

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Markets Update

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Markets Update Issue 8 2016

Welcome to Issue 8 of 2016 of the Central Bank of Ireland's Markets Update. In the Markets Update, we advise interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and investment firms. Items that may be of interest such as recent speeches are also included. Markets Update is published as required, rather than on a regular periodic basis. Please sign up to the RSS feed if you wish to receive each issue of Markets Update.

Please note that this Markets Update is intended to be a general summary only and does not purport to constitute an interpretation of, or the Central Bank's position on, any of the legislative provisions, rules, requirements or guidance referenced herein. In case of any doubt, you should refer to the relevant legislative provision, rule, requirement or guidance document as applicable. The staff of the Central Bank are not authorised and cannot give you legal advice; you should seek this from your own legal advisor, if required.

Central Bank of Ireland

MiFID Firms

Address by Michael Hodson, Head of Investment Firms and Funds Services at EY Funds Forum 2016 on The Regulatory Perspective

Address by Michael Hodson, Head of Investment Firms and Funds Services at EY Funds Forum 2016 on The Regulatory Perspective.

CP Third Consultation Feedback Statement

Feedback Statement and Final Guidance on CP86 - The Central Bank has today, 19 December 2016, published the feedback statement on CP86 - Consultation on Fund Management Company Effectiveness - Managerial Functions, Operational Issues and Procedural Matters ("Third Consultation"). Along with this, the Central Bank has published the final on managerial functions, operational issues and procedural matters.

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AIFMD

AIFMD Q&A Twenty-Second Edition Published

On 19 December 2016, the Central Bank published the twenty-second edition of the AIFMD Q&A. Existing question ID 1094 is updated. New questions ID 1112 - ID 1116 are included.

UCITS

UCITS Q&A – Fifteenth Edition Published

On 19 December 2016, the Central Bank published a fifteenth Edition (GNS.4.8.2 UCITS QA NO 15 FINAL_CC) of the UCITS Q&A. Existing question ID 1015 was updated and question ID 1053 was deleted and replaced. New questions ID 1073 – ID 1075 are added.

European Commission

The European Commission announces political agreement on a new prospectus regulation

On 8 December 2016, the Commission announced that they had reached an agreement with the European Parliament and the Council on a revamped prospectus regulation. The new prospectus regulation will replace the existing Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading.

European Securities and Markets Authority (ESMA)

ESMA Guidelines and Recommendations

ESMA updates AIFMD Q&A

On 16 December 2016, the European Securities and Markets Authority (ESMA) published an updated questions and answers document (Q&A) on the application of the Alternative Investment Fund Managers Directive (AIFMD).

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The Q&A includes one updated question and answer on reporting obligations by non-EU AIFMs under Article 42 of the AIFMD, clarifying the circumstances under which information on EU master AIFs should be reported to competent authorities.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures.

ESMA updates MiFID II Q&A on Investor Protection

On 16 December 2016, the European Securities and Markets Authority (ESMA) added new Q&As to its Questions and Answers (Q&A) document on the implementation of investor protection topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR).

This Q&A provides clarifications on the following topics:

- Suitability
- Post sale reporting
- Inducements (research)
- Information on charges and costs
- Underwriting and placement of a financial instrument

MiFID II applies from 3 January 2018 and will strengthen the protection of investors by both introducing new requirements and reinforcing existing ones. The purpose of this Q&A is to promote common supervisory approaches and practices in the application of MiFID II/ MiFIR for investor protection topics.

ESMA will continue to develop this Q&A on investor protection topics under MiFID II in the coming months, both adding questions and answers to the topics already covered and introducing new sections for other MiFID II investor protection areas not yet addressed in this Q&A.

ESMA consults on extending aggregated trade repository data

On 15 December 2016, the European Securities and Markets Authority opened a public consultation on the extension of data available to the public in trade repositories as stipulated in the European Market Infrastructure Regulation (EMIR).

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Public data has experienced several problems related to the comparison and aggregation of data across trade repositories. Therefore, ESMA is setting out several proposals to enhance the data made publicly available by trade repositories and to increase the transparency to the public in general as well as allowing to add the publication of certain figures that will be required by EU regulations such as MiFID II and the Benchmarks Regulation.

This consultation asks stakeholders' views on ESMA's proposals related to:

- the avoidance of double counting of cleared derivatives;
- data aggregations for commodity derivatives and
- derivatives using benchmarks, as well as general technical aspects of publication of aggregate data.

The consultation is open for feedback until 15 February 2017. ESMA will use the feedback received to finalise the amendments to the technical standards.

ESMA recognises ICE Clear US Inc. as third-country CCP under EMIR

On 14 December 2016, the European Securities and Markets Authority (ESMA) added ICE Clear US Inc. to its list of recognised third-country central counterparties (CCPs) under the European Markets Infrastructure Regulation (EMIR). EMIR requires EU-based CCPs to be authorised and non-EU CCPs to be recognised in the European Union (EU). Once a CCP has been authorised or recognised within the EU, EU firms can use these CCP to fulfil their clearing obligations.

ESMA sees continued high levels of market risks

On 1 December 2016, the European Securities and Markets Authority (ESMA) risk assessment has updated its Risk Dashboard for the third quarter of 2016.

ESMA European Rating Platform

The European Securities and Markets Authority (ESMA) has launched its new database, the European Rating Platform, to provide access to free, up-to-date information on credit ratings and rating outlooks on its website. The ERP is an important element of ESMA's work, following the financial

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crisis, to increase transparency around credit ratings and help investors make informed decisions.

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T: +353 (0)1 224 6000
E: webadmin@centralbank.ie
www.centralbank.ie



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