

## **Asset management and investment funds**

## **Legal and regulatory developments**

Covering the period  
1 January to 31 March 2024



## Key Dates

### 2024

11 March 2024	Central Bank publishes the finalised ELTIF chapter to the AIF Rulebook and permitting applications for closed-ended ELTIF authorisation.
14 April 2024	New template cross-border notification forms become effective for AIFMs.
29 April 2024	EMIR REFIT revised guidelines and technical documentation come into effect necessitating enhancements to EMIR reporting.
24 May 2024	In-scope funds investing over 50% of their portfolio in directly or indirectly held Irish property assets ("Property Funds") to take action to ensure their liquidity timeframes comply with the Central Bank's guidance on redemption terms for Property Funds.
27 May 2024	Revised additional capital requirements and internal capital assessment rules apply to fund management companies authorised to provide individual portfolio management services.
28 May 2024	Funds having exposures to US securities to complete review of their trading and settlement procedures ahead of the SEC transition to a T+1 settlement cycle.
30 June 2024	Fund management companies to complete a review of their asset valuation frameworks.
14 July 2024	New template cross-border notification forms become effective for UCITS and UCITS management companies.

This is a condensed version of our Asset Management and Investment Funds Legal and Regulatory Report setting out key developments during the quarter.

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## Quarter Highlights

In the this quarter of the Walkers legal and regulatory report, we identify a number of key highlights during the period as follows:

Following publication in the Official Journal of the European Union ("EU"), the final text of **AIFMD II** will enter into force on 15 April 2024 reflecting a two year transposition period (as outlined in **section 1.1** of the report).

The Central Bank of Ireland (the "**Central Bank**") has during the period issued a number of updates of significance:

- clarification on a number of significant positions on the Irish European Long-Term Investment Funds ("**ELTIF**") framework contained in the final ELTIF chapter to the AIF Rulebook and in its CP155 feedback statement (**section 2.2(a)**), which come alongside a communication from the European Commission regarding its intention to permit further flexibility on liquidity arrangements within the **ELTIF Regulation RTS (section 3.4(b))**;
- the **Regulatory and Supervisory Outlook** outlines the key trends and risks which the Central Bank has identified as moulding the financial sector operating landscape and its consequent regulatory and supervisory priorities for the next two years (2024/25) (**section 2.1**);
- reminder to relevant entities subject to new reporting requirements in **EMIR REFIT** to engage with their report submitting entities and their trade repositories to ensure that they are in a position to report under the new reporting requirements as of 29 April 2024 (**section 2.2(c)**);

Changes in cross-border notifications under AIFMD and the UCITS Directive were published in the Official Journal and will come into effect over the coming months (**section 1.2**).

ESMA updated its **PRIIPS KID** Q&A with a number of updated relevant to key investor documents for investment funds (**section 3.3(b)**);

At the **EU level**, with the end of the legislative cycle imminent, work continues apace to make further progress with developments during the period in a number of key policy proposals:

- **EMIR 3.0 (section 3.2(b))**;
- the new anti-money laundering package (**section 3.4(c)**);
- the EU's Artificial Intelligence Act (**section 3.4(e)**);
- directive on digital operational resilience for the financial sector ("**DORA**") (**section 3.4(f)**);
- markets in crypto assets regulation ("**MiCA**") (**section 3.4(g)**); and
- regulation on ESG ratings (**section 3.11(f)**).

The **UK Treasury's** announcement of its equivalence assessment for EEA states will see continuing market access granted to EEA-domiciled UCITS under the UK's **overseas fund regime**, without the imposition of additional UK requirements, as well as the extension by one year of the temporary marketing permissions to facilitate funds transitioning to the new regime (**section 3.1**).

## 1. AIFMD & UCITS DEVELOPMENTS

### 1.1 Adoption of AIFMD II (*This is a further update to section 1.1 of the quarterly report covering the fourth quarter of 2023 as well as of the monthly report covering February 2024*)

On 26 March 2024, [Directive \(EU\) 2024/927](#) of the European Parliament and of the Council of 13 March 2024 amending AIFMD (2011/61/EU) and the UCITS Directive (2009/65/EC) relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by AIFs ("AIFMD II") was published in the official journal of the EU (the "OJ").

On 26 March 2024, EFAMA published a Q&A answering a number of [key questions](#) on the revised AIFMD and UCITS Directives namely:

- why were the current AIFMD/UCITS regimes reviewed?
- what are the major changes the review process introduced?
- in light of these changes, will these frameworks remain successful?

#### Next steps

ESMA is now mandated to develop the following standards and guidelines:

- draft regulatory technical standards to specify the characteristics of liquidity management tools by 16 April 2025;
- draft regulatory technical standards on the characteristics of open-ended loan-originating AIFs by 16 April 2025;
- guidelines on the selection and calibration of liquidity management tools by 16 April 2025;
- guidelines to specify the circumstances in which the name of a UCITS or AIF is unfair, unclear or misleading by 16 April 2026. Those guidelines shall take into account relevant sectoral legislation and such sectoral legislation setting standards for fund names or marketing of funds takes precedence over those guidelines;
- guidelines providing indications to guide the competent authorities in their exercise of their powers to activate or deactivate the liquidity management tools where there are risks to investor protection or financial stability that, on a reasonable and balanced view, necessitate such activation or deactivation by 16 April 2026;
- draft regulatory technical standards on reporting obligations by 16 April 2027; and
- the recitals to AIFMD II note that ESMA should update its guidelines on sound remuneration policies under AIFMD and the UCITS Directive as regards aligning incentives with ESG risks in remuneration policies.

AIFMD II will enter into force on 15 April 2024. Member States are required to adopt and publish, by **16 April 2026**, the laws, regulations and administrative provisions into national legislation necessary to comply with AIFMD II, with the exception of new reporting requirements which apply from 16 April 2027 and subject to transition provisions for existing loan origination funds.

Walkers' asset management and investment funds team have published an [advisory](#) entitled 'AIFMD II - A Closer Look' which assesses the key changes which will impact full-scope EU alternative investment fund managers ("AIFMs") and the next steps in the implementation of AIFMD II.

- 1.2 Delegated and implementing regulations on cross-border notifications under AIFMD and UCITS Directive published in OJ (*This is a further update to section 1.6 and 2.4 of the quarterly report covering the fourth quarter of 2023*)

On 25 March 2024, the following technical standards as regards notification to national competent authorities of cross-border activities have been published in the Official Journal of the EU:

- [Commission Delegated Regulation \(EU\) 2024/911](#) of 15 December 2023 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be notified in relation to the cross-border activities of management companies and UCITS (C/2023/8703). This Regulation shall apply from 25 June 2024.
- [Commission Implementing Regulation \(EU\) 2024/910](#) of 15 December 2023 laying down implementing technical standards for the application of Directive 2009/65/EC of the European Parliament and of the Council with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Commission Regulation (EU) No 584/2010 (C/2023/8700). This Regulation shall apply from 14 July 2024.
- [Commission Delegated Regulation \(EU\) 2024/912](#) of 15 December 2023 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be notified in relation to the cross-border activities of managers of AIFMs (C/2023/8706). This Regulation shall apply from 25 June 2024.
- [Commission Implementing Regulation \(EU\) 2024/913](#) of 15 December 2023 laying down implementing technical standards for the application of Directive 2011/61/EU of the European Parliament and of the Council with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters (C/2023/8707). This Regulation shall apply from 14 April 2024.

The delegated acts are directly applicable and the Central Bank will now update its cross-border processes and published notification letters on its website to adapt to the new requirements laid down in the delegated and implementing regulations by the respective application dates.

## 2. CENTRAL BANK UPDATES

### 2.1 Regulatory and Supervisory Outlook 2024 and 'Dear CEO' letter

On 29 February 2024, the Central Bank [published](#) a new [Regulatory and Supervisory Outlook 2024](#) ("RSO") – its first annual report setting out the Central Bank's view on the key trends and risks facing the financial sector, along with the regulatory and supervisory priorities it has set in the context of those risks. The Central Bank also published [a letter Governor Makhoul wrote to the Minister for Finance](#) setting out his views on the macro-financial environment, the financial services landscape and the Central Bank's financial regulation priorities for the year ahead, including:

- **Working with the Department of Finance on priority policy areas** including, the completion of the 2030 Funds Review;
- **Putting in place a revised and modernised Consumer Protection Code** to ensure consumers are protected in a more digitalised financial services sector (with consultation paper 158 published on 7 March 2024);
- **Continuing to progress work both internationally and domestically to address systemic risks from the non-bank sector** and deepening their analysis and understanding of macro-prudential risks in this sector;
- the implementation of both **DORA** and **MiCA**;

- **Implementing the Individual Accountability Framework** (including within its supervision of firms) and supporting external stakeholders to embed the new standards; and
- development of policy work and supervisory expectations on **the use of artificial intelligence ("AI") in financial services**.

The headline sectoral risks and trends in the RSO for the funds and securities market sector are largely consistent with the supervisory priorities for the sector listed in last year's Securities Markets Risk Outlook [Report 2023](#), with further detail as set out below.

Topic	Risk Description	Risk drivers and risk outlook for 2024/5
<b>1. Leverage and liquidity</b>	<p>As an important provider of financial intermediation to the wider financial system, any issues with liquidity transformation in cohorts of open-ended funds could have systemic implications. Additionally, investor protection concerns may arise from inadequate liquidity risk management for individual funds.</p> <p>Specifically, concerns relate to:</p> <ul style="list-style-type: none"> <li>· the effects of rapid deleveraging;</li> <li>· synthetic leverage obtained via derivatives;</li> <li>· liquidity mismatches and forced asset sales</li> <li>· valuation issues, particularly involving less liquid assets; and</li> <li>· the fund sector being highly interconnected with other significant financial sectors including, banking, pensions and insurance.</li> </ul>	<p>The macroeconomic climate.</p> <p>Inadequate liquidity risk management frameworks within some firms.</p>
<b>2. Market Integrity</b>	<p>Abusive market practices and poor surveillance of same can create risks to the integrity and fairness of securities markets.</p> <p>Specifically, concerns relate to:</p> <ul style="list-style-type: none"> <li>· oversight and controls of high frequency/algorithmic trading ;</li> <li>· market manipulation (including cross-venue and via social media); and</li> <li>· market surveillance frameworks.</li> </ul>	<p>Inadequate market surveillance frameworks.</p> <p>Shortcoming in the governance of sophisticated trading algorithms</p>
<b>3. Conflicts of interest</b> <i>*Risk outlook increasing</i>	<p>Conflicts of interest can lead firms and/or their employees to prioritise their own interests over the interests of their clients or others. Deficiencies have recently been observed in how relationships between related parties are managed and connected party transactions are carried out.</p>	<p>Shortcomings in the governance of related party and group relationships.</p>
<b>4. Delegation and outsourcing</b>	<p>Delegation and outsourcing risks arising from inadequate oversight of delegated/outsourced activities, particularly in, but not limited to, the funds sector.</p>	<p>Shortcomings in delegation models, especially for funds.</p>

Topic	Risk Description	Risk drivers and risk outlook for 2024/5
5. Sustainable finance	<p>The risk of mislabelling investment products as sustainable when they do not meet all the relevant criteria.</p> <p>Concerns relate to:</p> <ul style="list-style-type: none"> <li>· ESG disclosures in fund documentation;</li> <li>· potential for greenwashing or green bleaching;</li> <li>· the lack of accurate data on sustainable investments; and</li> <li>· the need to finance the transition to a 'net zero' economy.</li> </ul>	<p>The increased demand for ethical investments.</p> <p>Rapidly increasing growth in sustainable finance.</p>
6. Data quality	<p>The risk that firms are not sufficiently overseeing the accuracy of their data, and that poor data quality hampers effective management of the firms and/or understanding of market positions/exposures.</p>	<p>Increasing volume and use of data.</p> <p>Poor governance of data quality</p>
7. Cybersecurity	<p>The risk of disruption to securities markets participants from cyber-attacks.</p>	<p>The acceleration of fintech.</p> <p>Greater home/hybrid working patterns.</p> <p>Geopolitical tensions</p>
8. AI and Fintech (New)	<p>AI and Fintech risks arising from the increasing prominence of new technology, specifically AI and machine learning, and in particular, how they are governed and aligned.</p>	<p>The growth in sophisticated AI and machine learning systems.</p>
9. External risk environment <i>*Risk outlook reducing</i>	<p>The risks to securities markets from the external environments in which they operate. This includes high inflation and interest rates as well as potential contagion effects from failing international firms.</p>	<p>The macroeconomic climate.</p> <p>Interconnectedness of financial system</p>

The risk outlook for Sustainable Finance notes that the new phenomenon of understating how green a product is, known as "*green bleaching*", has recently been observed in the funds sector. Green bleaching can occur where a fund management company does not want to risk non-compliance with the more onerous requirements of Article 9 of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector ("**SFDR**") and instead opts to categorise funds under the less onerous requirements of Article 8 or indeed Article 6. The Central Bank observed that, as is the case with greenwashing, green bleaching can result in inaccurate disclosure.

The Central Bank's key supervisory priorities for this sector in 2024/2025 are:

- Risk-based scrutiny and approval of prospectus applications, fund applications, fund service provider applications and new trading venues;
- Participation in ESMA's depositary peer review;

- Conclusion of thematic reviews on pre-trade controls frameworks and feeding into ESMA's corresponding common supervisory action;
- Implementation and operationalisation of EU Green Bond authorisations and post-authorisation filings for issuers;
- Sectoral/thematic assessments, including the completion of the ESMA Common Supervisory Action on the SFDR;
- Further development of an understanding of the use of AI and related governance processes from a conduct perspective, in particular for trading activities and corresponding opportunities and/or potential negative impacts on market integrity; and
- Continuing to enhance the capacity to identify and pursue instances of market abuse.

The RSO concludes with two further "Spotlight" chapters. Given its wide application to all sectors, AI is one of the technologies with the greatest transformative potential for the entities the Central Bank supervises and for the Central Bank itself as regulator. In parallel with other large organisations the Central Bank will be exploring and trialling how the deployment of the latest AI tools could assist it in optimising the use of its finite resources and in providing insights from the large data sources it has available as it seeks to continually enhance its supervisory effectiveness. The Central Bank highlighted that it will be undertaking policy work and developing its supervisory expectations of regulated entities related to the use of AI in financial services, including preparing for the implementation of the EU Artificial Intelligence Act (as further outlined in section 3.4(e) of this report). The Central Bank will seek to understand how firms are using AI to deliver and support existing financial services, as well as consideration of how AI could be used for new products, services, and business models.

The second Spotlight topic covered is **financial crime**, which is increasingly prevalent across the whole financial system and society. It can affect all sectors, all financial services users and the wider population, potentially undermining the integrity of the financial system.

#### *Dear CEO letter*

In early March 2024, the Central Bank published a cross-sectoral 'Dear CEO' [letter](#) to draw attention to the Central Bank's key regulation and supervision priorities for 2024. This follows the Governor's [letter](#) to the Minister for Finance outlining the Central Bank's financial regulation priorities and the publication for the RSO for 2024/25.

The letter outlines the six overarching supervisory priorities which frame the more detailed supervisory strategies for each of the financial sectors:

- Priority 1: Proactive risk management and consumer-centric leadership of firms;
- Priority 2: Firms are resilient to the challenging macro environment;
- Priority 3: Firms address operating framework deficiencies;
- Priority 4: Firms manage change effectively;
- Priority 5: Climate change and net zero transition; and
- Priority 6: Central Bank enhancing how it regulates and supervises.

The letter also outlines at a high-level the key regulatory initiatives contained in Governor Makhlouf's letter to the Minister.

On 28 March 2024, Deputy Governor Sharon Donnery delivered [remarks](#) at the Financial Industry Forum, International Subgroup which touches on the growing financial sector and the associated growing responsibilities as part of the context of why the Central Bank needs to transform our approach to regulation and supervision over the coming year. Ms Donnery outlined how the Central Bank is taking a more integrated view of risks and priorities, with the external version of that work reflected in the RSO. She also noted the Central Bank's improved F&P system, delivering benefits and efficiencies including reducing the processing time for Individual Questionnaires ("IQs") from

36 to 24 calendar days, in part through facilitating improved applications (with a 50% reduction in those returning incomplete).

The Central Bank also plans to publish an Authorisation and Gatekeeping report in the coming months setting out publically its priorities and expectations and how the Central Bank is evolving its approach.

These recent publications from the Central Bank provide a helpful overview for boards and officers of funds, their service providers and other market participants as they navigate the regulatory year ahead. It is clear that the Central Bank expect a demonstration of clear leadership on greenwashing as well as leverage/liquidity risk management with robust governance processes and ensuring that business models remain operationally resilient. Walkers will continue to keep firms and boards apprised of developments in the Central Bank's identified regulatory and supervisory priorities.

Our recent [advisory](#) outlines the Central Bank's key sectoral risks and supervisory focus for 2024/25 and next steps for boards of funds and their service providers. Walkers will continue to keep firms and boards apprised of developments in the Central Bank's identified regulatory and supervisory priorities.

## 2.2 Markets updates during the period

- (a) *Issue 3 of 2024 (This is a further update to section 3.1 of the quarterly report covering the fourth quarter of 2023)*

On 11 March 2024, the Central Bank published the following significant updates via its [Markets Update](#) (issue 3 of 2024).

- [ELTIF Authorisation Process – New Application Form and updated Website Guidance](#)
- [Central Bank publishes Feedback Statement to Consultation Paper 155 – ELTIF chapter in the AIF Rulebook](#)
- [Central Bank publishes updated AIF Rulebook to include ELTIF chapter](#)

Following industry engagement, the CP155 feedback statement and final rules contained in the ELTIF chapter to the AIF Rulebook mark a softening of a number of the Central Bank's original positions set out in CP155, as had been sign-posted to the funds industry earlier in the year and as discussed on Walkers recent Irish ELTIF 2.0 [webinar](#).

The Central Bank will permit the authorisation of ELTIF sub-funds under a standalone ELTIF product and under umbrella AIFs, it thereby being possible to establish ELTIF and non-ELTIF sub-funds in the same umbrella.

The Central Bank has provided definitions for three separate categories of Irish ELTIF:

- (i) professional investor ELTIFs;
- (ii) qualified investor ELTIFs; and
- (iii) retail investor ELTIFs.

The relevant authorisation process (umbrella/standalone and sub-fund applications) for ELTIF applications varies depending on the targeted investor type. The current QIAIF 24-hour authorisation framework will be available to both professional investor ELTIFs and qualified investor ELTIFs. In the case of qualified investor ELTIFs which are not restricted to professional investors only, the retail requirements and limits as set out in the ELTIF Regulation will be applied in the interests of ensuring appropriate investor protection. The Central Bank's authorisation process is currently only applicable to closed-ended ELTIFs until such a time as the final regulatory technical standards ("RTS") are available.

Reflecting the structure and operationalisation of the ELTIF, the Central Bank has incorporated into the ELTIF chapter the Central Bank's guidance on share class features of closed-ended QIAIFs, thereby allowing for the allocation of the returns of specific assets to an ELTIF share class and/or participation by a share class in the ELTIF other than on a pro rata basis.

The final ELTIF chapter also dispenses with a number of requirements contained in the original CP155 proposals to avoid an overlap with the ELTIF Regulation on European Long-Term Investment Funds ((EU) 2015/760) ("**ELTIF Regulation**") or the imposition of duplicative requirements. These deletions include the Central Bank's requirements in relation to investment through subsidiaries, restriction on acquiring shares carrying voting rights as well as certain rules relating to ELTIFs acquiring real estate. The Central Bank has also removed specific requirements relating to marketing to retail investors in Part II of the original ELTIF chapter acknowledging that the cross-border requirements within ELTIF Regulation already apply.

The clarification of positions contained in the Central Bank's final ELTIF framework alongside details of the authorisation process for ELTIF applications pave the way for the Central Bank to commence accepting submissions from applicants pursuant to ELTIF Regulation.

Nicholas Blake-Knox participated alongside senior officials from both the Central Bank and the European Commission's (the "**Commission**") Asset Management Unit in a recent Irish Funds [webinar](#) which outlined what the Central Bank's final rules mean for the Irish ELTIF product.

Walkers' asset management and investment funds team have published a [briefing note](#) on the Central Bank's announcement of its ELTIF rules as well as the Commission's intention to permit further flexibility on liquidity arrangements within the ELTIF Regulation RTS (as outlined in section 3.3(b) of this report).

(b) *Issue 2 of 2024*

On 8 March 2024, the Central Bank published the following updates via its [Markets Update](#) (issue 2 of 2024).

- [Funds Authorisation Updates \(umbrella authorisation process and final authorisation documents 5.00 pm deadline\)](#)

The Central Bank has updated its [umbrella authorisation process](#) (with a 5.00 pm deadline for final authorisation documents) as set out below.

- UCITS and retail investor alternative investment fund ("**RIAIF**") final authorisation documents to be submitted by 5.00 pm on the day prior to the proposed authorisation day (aligning with QIAIFs), with dated documentation for final clearance to be received by the authorisation team no later than 10am on the day prior to the proposed authorisation day.
- UCITS & RIAIF umbrella applications to be submitted via portal (and no longer accepted by email). Standalone UCITS/RIAIF and new sub-funds of existing UCITS/RIAIF umbrellas will continue to be submitted through ORION.
- ELTIF applications will also be submitted via the portal.
- [The Central Bank publishes the second edition of its Prospectus Regulatory Framework Questions & Answers document](#)

On 7 March 2024, the Central Bank published a revised edition of its [Q&A](#) on the [Prospectus Regulation Framework](#), including revisions to the Q&A on the exemptions from publishing a prospectus under Prospectus Regulation requirements.

Walkers have published a recent [advisory](#) outlining the principal changes reflected in the Q&A.

- (c) *Issue 1 of 2024* (This is a further update to section 4.4(d) of the quarterly report covering the fourth quarter of 2023)

On 9 February 2024, the Central Bank published its markets [update](#) (issue 1 of 2024) including a notification updating the Central Bank's [EMIR webpage](#) regarding the forthcoming implementation of enhanced reporting requirements under EMIR Refit.

The notice notes that EMIR was revised in the EMIR regulatory fitness and performance programme ("EMIR REFIT") which came into force on 17 June 2019. The new reporting requirements under EMIR REFIT come into force from 29 April 2024. The statement notes that financial counterparties ("FCs") and non-financial-counterparties ("NFCs") should engage with their report submitting entities and their trade repositories ("TRs") to ensure that they are in a position to report under the new reporting requirements as of 29 April 2024.

Relevant FCs and NFCs should take into account the [guidelines on reporting](#), the validation rules applied by TRs, the reconciliation tolerances as well as the ISO 20022 XML schemas to ensure that reporting is performed according to the EMIR REFIT regime, including the specifications of the technical standards on reporting and on the reconciliation and verification of data.

The remaining updates of relevance on this issue are covered in our previous reports.

### 2.3 Tribunal judgement concerning Central Bank fitness and probity ("F&P") assessment

On 14 February 2024, the Central Bank issued a [public statement](#) following an Irish Financial Services Appeals Tribunal ("IFSAT") [judgement](#) in relation to a decision by the Central Bank to refuse an individual's application to be approved for the two positions of Non-Executive Director and Chairman of a UCITS ICAV under the Central Bank's F&P regime.

The application was rejected by the Central Bank on the basis that the Central Bank was of the opinion that the individual seeking approval had not demonstrated a clear and comprehensive understanding of the legal and regulatory environment, or the competency and skills appropriate to the pre-approval controlled functions ("PCF") roles applied for.

The IFSAT judgement found "fundamental procedural flaws" at all three stages of the process and asserted that the original process fell below the standard of constitutional fairness. Ultimately IFSAT found that the decision to refuse the application was, in law, incorrect. Accordingly, IFSAT has returned the application to the Central Bank for reassessment.

The Central Bank has, therefore, decided to commission an independent review of the F&P approval process to ensure that it remains effective into the future with the outcome of this review to be published in due course. Meanwhile, all of the Central Bank's gatekeeping functions, including the F&P approval process, will continue to operate in accordance with agreed service standards.

On 1 March 2024, the Central Bank published its [Terms of Reference](#) ("ToR") for an independent assessment on the manner in which the Central Bank exercises its statutory functions in relation to fitness and probity (focusing on the Central Bank's processes, systems and structures). The ToR notes the timeframe remains to be discussed with the reviewer.

The Central Bank subsequently [announced](#) that the report arising from this review will be led by Andrea Enria (former Chair of both the ECB's Supervisory Board and the European Banking Authority) and will be published in Q3 2024.

## 2.4 Information note – PCF-16 branch manager of branches established outside the State (*This is a further update to section 3.2 of the quarterly report covering the fourth quarter of 2023*)

On 14 February 2024, the Central Bank published a [PCF-16 Information Note](#) entitled 'Branch manager of branches established outside the State'.

The note concerns the introduction of the materiality threshold for the PCF-16 role (applying to managers of outgoing branches) which is only applicable where the business arising from the branch amounts to 5% or more of, as applicable, the assets or revenues or gross written premium of the regulated financial service provider. The Central Bank has provided the additional information regarding the change to PCF-16 role in the form of frequently asked questions (the "FAQ").

The FAQ sets out process to be followed by individuals currently designated as PCF-16 where the branch does not meet or exceed the 5% threshold. In this case firms are required to end-date the relevant PCF-16 role, by way of resignation on the Central Bank's portal, and this process should be completed by 29 March 2024.

## 2.5 Enforcement action concerning market abuse breach

On 29 February 2024, the Central Bank published a public [statement](#) relating to an enforcement action against a MiFID investment firm which was assessed as part of the Central Bank's market abuse thematic review, where the firm was fined €1,225,000, for a breach of its obligations under Article 16(2) of the Market Abuse Regulations (596/2014/EU) ("MAR"). The fine reflects the application of a settlement discount of 30%.

The breach concerned a contravention of the requirement that firms professionally arranging or executing transactions shall establish and maintain effective "arrangements, systems and procedures to detect and report suspicious orders and transactions". The Central Bank investigation found that the firm failed to put in place an effective trade surveillance framework to monitor, detect and report suspicious orders and transactions in relation to market abuse over five and a half years during the period July 2016 to January 2022. The statement noted failings in respect of risk identification, risk monitoring, governance and independent challenge from the third line of defence.

Seána Cunningham, the Central Bank's Director of Enforcement and Anti-Money Laundering, commented as follows:

"This outcome stresses the importance of effective arrangements, systems and procedures, such as trade surveillance frameworks, within firms that professionally arrange or execute transactions. Effective trade surveillance facilitates the submission of high quality suspicious transaction order reports (known as 'STORs') by firms to the Central Bank, which assist in the detection and combatting of market abuse.

MAR requires firms to take proactive steps to implement and maintain appropriate systems and frameworks to detect and report market abuse, as further detailed in relevant MAR regulatory technical standards, developed by ESMA. The Central Bank has repeatedly highlighted the importance of compliance with MAR since it came into force, through supervisory engagements, Dear CEO letters and Securities Markets Risk Outlook Reports.

The Central Bank expects the board and senior management of regulated entities to take full ownership of the governance of market conduct risk. This case serves to highlight the importance the Central Bank places on firms' abilities to "monitor, detect and report suspected market abuse, a critical part of protecting the integrity of financial markets."

## 2.6 Industry communication on revised markets in financial instruments regulation ("MiFIR")

On 27 March 2024, the Central Bank issued an [industry communication](#) noting the [revised MiFIR text](#) enters into force on 28 March 2024.

The revised MiFIR text introduces an EU-wide consolidated tape that brings together market data provided by platforms on which financial instruments are traded in the EU. It also includes a prohibition on receiving payment for order flow, which seeks to phase out the practice whereby brokers receive payments for forwarding client orders to trading platforms. The new MiFIR rules cover among other things the limitations regarding 'dark trading' which describes trading without pre-trade transparency.

On 27 March 2024, the Commission published a draft interpretative [notice](#) to provide clarity to market participants on the MiFIR transitional provision. The industry communication also notes ESMA has published a [statement](#) clarifying the application of certain MiFIR provisions, including the volume cap mechanism.

The Commission is working with ESMA to develop Commission delegated regulations specifying the new rules including for the single volume cap.

## 2.7 Central Bank Reform Act 2010 (Section 21(6)) Regulations 2024 (the "**Certification Regulations**") (This is a further update to section 3.2 of the quarterly report covering the fourth quarter of 2023)

On 12 January 2024, the Certification [Regulations](#) (S.I. No. 2 of 2024) were [published](#) in Iris Oifigiúil and came into effect.

The Certification Regulations give effect to section 21(6)(a) of the Central Bank Reform Act 2010 for the purposes of the giving of certificates of compliance with standards of fitness and probity.

## 2.8 PCF annual confirmation guidance (This is a further update to section 3.2 of the quarterly report covering the fourth quarter of 2023)

On 30 January 2024, the Central Bank published its [PCF Annual Confirmation guidance](#) which provides instructions for firms on how to complete and submit their annual PCF confirmation (the "**Confirmation**") via the Central Bank's portal system.

The accompanying Central Bank [webpage](#) notes that the Confirmation is accessible via the fitness and probity section of the portal and is available for completion. Firms should review the PCF roles listed in the Confirmation and correct any information prior to submission such as entering start dates or submitting resignations.

The Guidance notes that the Confirmation is made on the basis of the list of active PCF holders as at the time of the submission.

## 2.9 Demographic Analysis Report 2023 for PCF Roles

On 5 March 2024, the Central Bank published the [latest edition](#) of its demographic analysis report which highlights data on the gender diversity of applications for PCF roles during 2023. The analysis is primarily focused on gender diversity as there is limited data on other forms of diversity (beyond age).

The report shows an improvement in gender imbalance for board level applications across all sectors, with female applications for these positions increasing. However, female representation in applications for senior roles stood at 32% in 2023 (no change from 2022). Whilst this is an increase on the 16% recorded in 2012, the report more work needs to be done.

The data for 2023 shows a continuation of the upward trend in female representation at board level with chair roles up from 30% in 2022 to 39% in 2023. Female applications for board positions across industry are up from 29% to 31%, while representation on the boards of banks has increased from 26% in 2022 to 33% in 2023.

The asset management and securities & markets sectors accounted for the largest share of PCF applications with 24% of total applications received for each sector in 2023 (representing a 81% / 19% split between existing and new firms in the asset management sector).

In the report, Deputy Governor, Derville Rowland notes that overall the results are mixed and the Central Bank would like to see more progress to push past the 1/3 mark and get closer to parity of representation.

## 2.10 CP158 - Consultation on a modernised consumer protection code (the "Code")

On 7 March 2024, the Central Bank [launched](#) its latest [Consultation Paper \(CP158\)](#) on the revision of its Code aimed at modernising, clarifying and integrating the Code, as well as enhancing its accessibility.

The consultation contains a package of protections including proposals related to digitalisation; informing effectively; mortgage credit and switching; additional disclosure requirements where regulated firms are carrying out unregulated activities; frauds and scams; vulnerability; and climate risk.

The revised Code will be contained in two new Central Bank Regulations:

- The first [Draft Central Bank Reform Act 2010 \(Section 17A\) \(Standards for Business\) Regulations](#) set out Standards for Business, complemented by Supporting Standards for Business (with further detail on firms obligations), which will replace the existing General Principles of the Code (Annex 3). The Standards for Business set out governance, resource and risk management requirements for firms when doing business with individuals and small businesses. The application of individual conduct standards under the Individual Accountability Framework ("IAF") aligns with the Code's conduct-related Standards for Business. The timeline and finalisation of the Business Conduct Standards applicable to regulated firms under the IAF is linked to and will become effective when the Code is implemented.
- The second [Draft Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\) \(Conduct of Business\) Regulations](#) set out [General Requirements](#), which will include new protections, and existing requirements set out on a cross-sectoral and sector specific basis (Annex 4). The general requirements will apply to the regulated business of firms done with customers who meet the definition of 'consumer' i.e. individuals and small businesses.

The Central Bank has also published the following guidance as part of its consultation:

- [Guidance on Securing Customers' Interests](#); and
- [Guidance on Protecting Consumers in Vulnerable Circumstances](#).

The Central Bank published Deputy Governor, Derville Rowland's [Opening Remarks](#) on the launch of CP158.

The consultation will remain open for three months until 7 June 2024 and the Central Bank aims to finalise and publish the revised Code alongside a feedback statement in early 2025.

## 2.11 Remarks on Innovation and Trust *(This is a further update to section 3.15 of the quarterly report covering the fourth quarter of 2023)*

On 7 February 2024, Deputy Governor, Sharon Donnery delivered remarks entitled "[Innovation and Trust – Regulating in the interests of us all](#)" which included comments on the Central Bank's approach to its recent consultation (CP156) on innovation engagement in the financial services sector.

Ms. Donnery notes that the Central Bank's intention is to enhance its innovation hub to deliver deeper, clearer and more informed engagement; as well as to launch its Innovation Sandbox Programme, aimed at innovative initiatives which are consistent with the Central Bank's public policy objectives later this year.

## 2.12 Investment fund statistics Q4 2023

On 26 February 2024, the Central Bank published its Investment Fund [Statistics](#) for Q4 2023, which show net asset values of Irish regulated funds ("IFs") increased for the fifth successive quarter, by €228bn to €4,083bn, in Q4 of 2023, driven mainly by positive revaluations of €92bn and transaction inflows of €39bn.

On 19 March 2024, EFAMA also published its European Quarterly Statistical [Release](#) for Q4 2023, together with an overview of the year 2023 which shows that Irish domiciled UCITS and AIFs account for 24% and 11% of the market in Europe (including UK) respectively. The report highlights that net assets of UCITS and AIFs rebounded in the fourth quarter and rose by 4.8% the dominance of ETFs and also significant money market fund ("MMF") inflows. The release notes that long-term SFDR Article 8 and Article 9 funds registered net outflows. These constitute the first quarterly net outflows from Article 9 funds since the inception of the SFDR.

## 3. OTHER LEGAL AND REGULATORY DEVELOPMENTS

### 3.1 UK Treasury equivalence assessment on EEA states *(This is a further update to section 4.9(a) of the report covering the fourth quarter of 2023)*

On 30 January 2024, the UK Economic Secretary to HM Treasury delivered a [statement](#) on the UK's equivalence assessment of EEA states for the overseas fund regime ("OFR") confirming:

- the UK government, following a detailed assessment, has found the EEA states (including EU member states) equivalent under the OFR;
- the UK government does not intend to require the funds assessed to comply with any additional UK requirements as part of the equivalence determination *at this time*;
- the decision applies to funds structured as UCITS but does not cover MMFs because of ongoing MMF regulatory developments;
- the UK will monitor the equivalence decision on an ongoing basis, taking into account UK and EEA regulatory developments. The UK government intends to consult on whether to broaden the scope of the UK's sustainable disclosure requirements ("SDR") to include funds recognised under the OFR; and
- the temporary marketing permissions regime ("TMPR") will be extended from 31 December 2025 until the end of 2026, to ensure funds are able to smoothly transition to the OFR.

Read more on the Treasury announcement and what it means for the TMPR in our recent advisory entitled [UK Treasury announcement on continued marketing of Irish funds in UK welcomed](#).

On 31 January 2024, the [Financial Services Act 2021 \(Overseas Funds Regime and Recognition of Parts of Schemes\) \(Amendment and Modification\) Regulations 2024 \(SI 2024/114\)](#) was published with an [explanatory memorandum](#). These Regulations support the operationalisation of the OFR

whereby funds recognised under section 271A of the Financial Services and Markets Act 2000 ("FSMA"), will be treated in the same way as funds recognised under section 272 of FSMA.

The FCA is due to contact fund operators in 2024 with information on landing slots for exiting the TMPR and has published details on preparing for these landing slots.

### 3.2 EMIR Regulation (648/2012) ("EMIR")

- (a) *Decision on withdrawal of Tier 1 third-country central counterparty ("CCP") (This is a further update to section 3.4(c) of the quarterly report covering the third quarter of 2023)*

On 6 February 2024, the European Supervisory Authorities ("ESAs") [published](#) a decision (which has become operational) given by the Board of Appeal of the ESAs to dismiss the Dubai Commodities Clearing Corporation's appeal against ESMA's decision to withdraw its recognition as a Tier 1 third-country CCP under EMIR. Accordingly, ESMA has updated its list of [recognised third country CCPs](#).

- (b) *EMIR 3.0 (This is a further update to section 4.8(b) of the quarterly report covering the second quarter of 2023)*

On 7 February 2024, the Council of the EU published a [press release](#) announcing that it has reached provisional political agreement with the European Parliament (the "**Parliament**") on the legislative proposals amending EMIR intended to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets (so-called "**EMIR 3.0**").

On 14 February 2024, the Council released texts of the following proposed legislation, which reflect the outcome of provisional political agreements:

- [compromise text](#) for the proposed Regulation amending EMIR on measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of EU clearing markets (EMIR 3.0);
- [compromise text](#) for the proposed Directive amending various directives on the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (amending Directive);

The provisional political agreements are subject to approval by the Council and the Parliament before going through the formal adoption procedure.

On 27 March 2024, ESMA published a [statement](#) on deprioritising supervisory actions relating to the clearing obligation for third-country pension scheme arrangements ("**TC PSAs**") pending the final adoption and entry into force of EMIR 3.0. ESMA expects NCAs not to prioritise their supervisory actions in relation to the clearing obligation for transactions conducted with TC PSAs exempted from the clearing obligation under their third country's national law, and to generally apply their risk-based supervisory powers in their day to-day enforcement of applicable legislation in this area in a proportionate manner.

- (c) *Delegated regulation relating to temporary emergency measures on collateral requirements (This is a further update to section 3.2 of the quarterly report covering the fourth quarter of 2023)*

On 6 March 2024, [Commission Delegated Regulation \(EU\) 2024/818](#) amending the RTS laid down in Delegated Regulation (EU) 153/2013 relating to temporary emergency measures on collateral requirements under EMIR (648/2012) was published in the OJ.

Delegated Regulation (EU) 153/2013 specifies, among other things, requirements for CCPs to accept highly liquid collateral with minimal credit and market risk and was previously amended in November

2022 to temporarily expand the pool of eligible collateral to public guarantees and uncollateralised bank guarantees.

To avoid a potential discontinuity in the treatment of guarantees before the outcome of the EMIR 3.0 negotiations. The temporary measures enabling the use of such guarantees should therefore be extended for six months. The RTS amend Delegated Regulation (EU) 153/2013 accordingly.

Delegated Regulation (EU) 2024/818 entered into force on 7 March 2024

- (d) *Guidelines on position calculation by trade repositories (This is a further update to section 4.4(e) of the quarterly report covering the fourth quarter of 2023)*

On 1 March 2024 ESMA published the official language [versions](#) of guidelines on position calculation under Article 80(4) of EMIR, as amended by technical standards introduced under the EMIR Refit Regulation.

The revised guidelines will apply to TRs that are registered or recognised by ESMA in accordance with Articles 55 and 77 of EMIR respectively. The guidelines are being revised to ensure full alignment with the requirements set out by the technical standards and the guidelines on reporting under the EMIR Refit Regulation.

The guidelines will apply from 28 October 2024. On 29 April 2024, the original version of the guidelines will be repealed, giving TRs a six-month transition period.

- (e) *Commission delegated regulation amending RTS on clearing obligation under EMIR as regards TONA and SOFR benchmarks (This is a further update to section 3.12(b) of the quarterly report covering the second quarter of 2023)*

On 22 January 2024, [Commission Delegated Regulation 2024/363](#) amending RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the Tokyo Overnight Average Rate ("TONA") and the Secured Overnight Financing Rate ("SOFR") benchmarks referenced in certain OTC derivative contracts (the "**Delegated Regulation**") was published in the OJ.

The amending Delegated Regulation entered into force on 11 February 2024 and specifies that the clearing obligation also took effect from 11 February 2024 for certain transactions referencing SOFR and TONA.

### 3.3 ESMA & the European Supervisory Authorities (the "ESAs")

- (a) *ESMA planned consultations 2024*

On 19 January 2024, ESMA published its [overview](#) of planned consultations for 2024. In respect of the UCITS Directive, AIFMD and sustainable finance, these planned consultations include:

UCITS Directive (2009/65/EC)	AIFMD (2011/61/EU)
Call for evidence on the review of the UCITS Eligible Assets Directive Due Q1-Q2 2024	Guidelines on the selection and calibration of liquidity management tools Due Q2-Q3 2024
Guidelines on the selection and calibration of liquidity management tools Due Q2-Q3 2024	RTS on open-ended loan-originating AIFs Due Q2-Q3 2024
RTS on the characteristics of liquidity management tools	RTS on the characteristics of liquidity management tools

Due Q2-Q3 2024	Due Q2-Q3 2024
Technical advice to the on possible amendments to the UCITS Eligible Assets Directive Due 2025	Technical standards and guidelines as part of AIFMD II review (other than those relating to reporting) Due 2025
Sustainable finance – RTS on the European Single Electronic Format for reporting sustainability information under the European Sustainability Reporting Standards ("ESRS") Due Q3 2024	

ESMA has published the table to help stakeholders plan ahead and intends to update it on a regular basis.

- (b) *ESMA feedback statement on shortening the settlement cycle in the EU (This is a further update to section 4.4(q) of the quarterly report covering the fourth quarter of 2023)*

On 21 March 2024, ESMA published its [feedback statement](#) to its call for evidence on shortening the settlement cycle. The feedback report shows responses indicate mixed impacts of shortening the settlement cycle in the EU including:

- Many operational impacts beyond adaptations of post-trade processes are identified as resulting from a reduction of the securities settlement cycle in the EU.
- Respondents identified a wide range of both potential costs and benefits of a shortened cycle, with some responses supporting a thorough impact assessment before deciding.
- Respondents provided suggestions around how and when a shorter settlement cycle could be achieved, with a strong demand for a clear signal from the regulatory front at the start of the work and clear coordination between regulators and the industry.
- Stakeholders made clear the need for a proactive approach to adapt their own processes to the transition to T+1 in other jurisdictions. Some responses warned about potential infringements due to the misalignment of the EU and North America settlement cycles, that ESMA is currently assessing.

ESMA notes stakeholders' concerns arise from the impacts of the transition to T+1 in North America, with three main requests:

- addressing a potential breach of the UCITS limits for investments in deposits (Article 52(1)(b) of UCITS Directive) due to a mismatch in the settlement cycles;
- forbearance for a potential breach of the temporary borrowing limits (Article 83(2) of UCITS Directive); and
- a temporary suspension of CSDR settlement discipline (cash penalties).

ESMA sets out its reasons in not recommending legislative change, exemptions or forbearance at this stage for UCITS dealing with the expected change.

Noting several questions remain to be better understood on shortening the settlement cycle in the EU, ESMA will continue assessing, including the demands for regulatory/supervisory guidance. ESMA aims at including lessons learnt from the North American move to T+1 and intends to deliver its final assessment to the Parliament and to the Council before 17 January 2025.

The Central Bank has also recently issued a communication to regulated fund service providers ("FSPs") in order to assess the progress made by FSPs in preparation for the move to T+1 in North America.

- (c) *Packaged retail and insurance-based investment products ("PRIIPs") key investor document ("KID") Q&A (updated) (This is a further update to section 4.4(f) of the quarterly report covering the fourth quarter of 2023)*

On 15 March 2024, the ESAs published a revised version of its consolidated [Q&A](#) on the PRIIPs Regulation (EU) No 1286/2014 as amended with updates of relevance to investment funds on the following topics:

- PRIIPs "open to subscription";
- the terms "benchmark", "proxy" and "synthetic proxies" when sufficient history is unavailable;
- currency risk applicable to investment funds;
- performance scenarios and past performance information; and
- costs disclosures.

- (d) *MMF guidelines on stress test scenarios*

On 6 March 2024, ESMA published its annually updated [guidelines](#) on stress test scenarios under Article 28 of the MMF Regulation.

The parts of the guidelines shown in red text will apply from 6 May 2024. The other parts of the guidelines already apply from the dates specified in Articles 44 and 47 of the Regulation.

- (e) *Report on corporate reporting enforcement and regulatory activities*

On 26 March 2024, ESMA published its [report](#) on its corporate reporting enforcement and regulatory activities in 2023. The report provides an overview of the activities of ESMA and national enforcers in the European Economic Area when examining compliance of financial and non-financial information provided by issuers including how issuers comply with International Financial Reporting Standards, guidelines on Alternative Performance Measures, non-financial reporting obligations and the European Single Electronic Format reporting requirements.

The report also presents the main activities contributing to supervisory convergence performed at European level.

- (f) *Markets in Crypto Assets Regulation ("MiCA") guidelines - First rules on crypto-assets service providers ("CASPs") and third MiCA consultation (This is a further update to section 4.4(h) of the quarterly report covering the fourth quarter of 2023)*

On 25 March 2024, ESMA published its [first Final Report](#) under the MiCA.

The report, which aims to foster clarity and predictability, promote fair competition between CASPs and a safer environment for investors across the EU, includes proposals on:

- information required for the authorisation of CASPs;
- the information required where financial entities notify their intent to provide crypto-asset services;
- information required for the assessment of intended acquisition of a qualifying holding in a CASP; and
- how CASPs should address complaints.

ESMA has submitted the final report to the Commission and will provide further advice and technical guidance in this area if requested.

On 25 March 2024, ESMA also published its [third consultation package](#) under MiCA seeking views with respect to four sets of proposed rules and guidelines, covering:

- detection and reporting of suspected market abuse in crypto-assets (RTS);
- policies and procedures, including the rights of clients, for crypto-asset transfer services (guidelines);
- suitability requirements for certain crypto-asset services and format of the periodic statement for portfolio management (guidelines);
- ICT operational resilience for certain entities under MiCA (guidelines).

The consultation will close on 25 June 2024, ESMA will publish a final report based on the feedback received and will submit the draft technical standards to the Commission for endorsement by 30 December 2024 at the latest.

(g) *Consultation papers on MiCA guidelines (This is a further update to section 4.4(h) of the report covering the fourth quarter of 2023)*

On 29 January 2024, ESMA [published](#) consultations papers on guidelines under MiCA on [reverse solicitation](#) and on the [classification of crypto-assets as financial instruments](#).

*Consultation paper on guidelines on conditions and criteria for the classification of crypto-assets as financial instruments*

ESMA is seeking input on establishing clear conditions and criteria for the qualification of crypto-assets as financial instruments. This initiative, which follow on from [previous work by ESMA](#), is aimed at bridging the MiCA regulation and the MiFID II and ensuring consistency across the EU.

The proposed guidelines aim at providing national competent authorities ("NCAs") and market participants with structured but flexible conditions and criteria to determine whether a crypto-asset can be classified as a financial instrument. To do so, the draft guidelines aim to strike a balance between providing guidance and avoiding establishing a one-size-fits-all approach. Once finalised, these guidelines will provide much-needed clarity and contribute to the global standards in crypto-asset regulation.

*Consultation paper on guidelines on reverse solicitation*

ESMA is seeking input on proposed guidance relating to the conditions of application of the reverse solicitation exemption applicable to third-country firms only and the supervision practices that NCAs may take to prevent its circumvention. The proposed guidance confirms [ESMA's previous message](#) that the provision of crypto-asset services by a third-country firm is limited under MiCA to cases where the client is the exclusive initiator of the service. This exemption should be understood as very narrowly framed and must be regarded as the exception - a firm cannot use it to bypass MiCA.

ESMA seeks comments from stakeholders on both consultations by 29 April 2024 and will publish a report on the guidelines in Q4 2024.

(h) *Updated ESMA Q&As*

On 2 February 2024, ESMA published a [press release](#) announcing that it had updated a number of its Q&As including on EMIR, MiCA and MiFIR.

The press release links to a [webpage](#) that explains its previously published Q&A documents have not been updated after 31 December 2023. Q&As issued as of 1 January 2024 are now in the ESMA [Q&A IT-tool](#).

(i) *Statement on the deprioritisation of best execution supervisory actions*

On 13 February 2024, ESMA release a [statement](#) on the deprioritisation of supervisory actions concerning the obligation to publish the best execution reports required under Commission Delegated Regulation (EU) 2017/576 ("RTS 28 reports").

Pending the forthcoming legislative amendment to Article 27(6) of MiFID, which will delete the obligation, ESMA expects NCAs not to prioritise supervisory actions towards investment firms concerning the periodic reporting obligation to publish the RTS 28 reports.

The Central Bank released a [statement](#) confirming that it will apply the measures outlined in this ESMA statement.

(j) *Warning on social media investment recommendations (This is a further update to section 2.3(d) of the monthly report covering January 2024)*

On 6 February 2024, ESMA published a [warning](#) for people posting investment recommendations on social media.

The warning discusses, among other things, what constitutes an investment recommendation, the applicable regulations and consequences of non-compliance, the general requirements under MAR and how additional requirements apply to certain professionals and experts. The warning also includes some practical examples of posts that constitute:

- indirect and direct recommendations;
- recommendations by an expert;
- a direct recommendation by a non-professional and non-expert; and
- unlawful disclosure of inside information.

ESMA explains that it and NCAs are raising awareness of some requirements established by MAR that apply to the posting of investment recommendations and of the risks of market manipulation when posting on social media.

(k) *First set of DORA technical standards for information and communication technology ("ICT") and third-party risk management and incident classification (This is a further update to section 4.6(g) of the report covering the second quarter of 2023)*

On 17 January 2024, the ESAs [published](#) the first set of draft technical standards under Regulation (EU) 2022/2554 on digital operational resilience for the financial sector ("DORA") aimed at strengthening financial entities' ICT and third-party risk management and incident reporting frameworks.

The joint final draft technical standards include:

- [Regulatory Technical Standards \(RTS\) on ICT risk management framework and on simplified ICT risk management framework;](#)

The draft RTS on ICT risk management framework identify further elements related to ICT risk management with a view to harmonise tools, methods, processes and policies. The RTS identify the key elements that financial entities subject to the simplified regime and of lower scale, risk, size and complexity would need to have in place, setting out a simplified ICT risk management framework. The RTS seek to ensure the ICT risk management requirements are harmonised among the different financial sectors.

- [RTS on criteria for the classification of ICT-related incidents](#);

The draft RTS specify the criteria for the classification of major ICT-related incidents, the approach for the classification of major incidents, the materiality thresholds of each classification criterion, the criteria and materiality thresholds for determining significant cyber threats, the criteria for competent authorities to assess the relevance of incidents to competent authorities in other member states and the details of the incidents to be shared in this regard. The RTS seek to ensure a harmonised and simple process of classifying incident reports throughout the financial sector.

- [RTS to specify the policy on ICT services supporting critical or important functions provided by ICT third-party service providers \(TPPs\)](#);

The draft RTS specify parts of the governance arrangements, risk management and internal control framework that financial entities should have in place regarding the use of ICT third-party service providers.

- [Implementing Technical Standards \(ITS\) to establish the templates for the register of information](#).

The draft ITS set out the templates to be maintained and updated by financial entities in relation to their contractual arrangements with ICT third-party service providers.

The RTS and ITS have been developed following public consultation in accordance with Articles 15, 16(3), 18(3), 28(9) and 28(10) of DORA. The public consultation on the draft technical standards took place from 19 June to 11 September 2023.

The final draft technical standards have been submitted to the Commission, who will review with the objective to adopt these first set of standards in the coming months.

- (I) *First Trends, Risks and Vulnerabilities ("TRV") report of 2024 (This is a further update to section 3.5(a) of the quarterly report covering the third quarter of 2023)*

On 31 January 2024, ESMA published its [first risk monitoring report of 2024](#) along with its [statistical analysis annex](#), where ESMA sets out the key risk drivers currently facing financial markets.

ESMA's [press release](#) entitled '[Remarkable resilience of financial markets in a higher-for-longer interest-rate environment](#)' accompanies the report and highlights the key takeaways.

ESMA's chair highlights that "(r)etail investors increasingly get their updates through social media, and we again stress the need to be aware of the risk of receiving false or misleading information through these media. All investors should verify the reliability and the quality of the information they use in their investment decisions"

The following are the main report findings relevant to funds and fund service providers.

**Market-based finance:** Access to capital markets for European corporates continued to be mainly through fixed income markets and securitised products in 2H23. Equity primary markets slightly picked up. Corporate bond outlook will be shaped by a significant upcoming maturity wall from 2024 until 2028, with corporate debt sustainability remaining a considerable risk, especially in lower quality segments.

**Sustainable finance:** Following several years of uninterrupted growth, the take up of ESG investing and growth of ESG markets have levelled off in recent quarters. The ESG bond market grew at a slower pace, while gross issuance volumes declined. SFDR Article 9 funds with a sustainable investment objective faced net outflows for the first time in 4Q23, and outflows from SFDR Article 8

funds promoting environmental or social characteristics accelerated, with the use of ESG-related terms in fund names a key factor of differentiation between these funds.

**Financial innovation:** Crypto-asset valuations rebounded in 2023, fuelled by the hope that spot crypto ETFs would obtain approval by the US SEC, which they did in January 2024. Still, at EUR 1.5tn, total market capitalisation of crypto assets remains half of the 2021 historical peak. The use of artificial intelligence in finance is growing around a wide range of applications, even though dedicated AI-investment instruments remain limited.

**Securities markets:** Equity valuations were moderately up in 2H23 driven by an end-of-year rally linked to expectations of 2024 interest rate decreases. Volatility remained contained, while bid-ask spreads increased, highlighting market nervousness. Fixed-income markets were lower overall towards the end of 2023, with marked declines in yields for sovereign and corporate bonds in December. Credit quality of high-yield non-financials continued to decline, particularly associated with real estate, with default rates trending upwards.

**Asset management:** EU fund performance and flows were volatile in 2H23. Investors preferred fixed income funds over equity funds and MMFs specifically attracted significant inflows on higher interest rates and the inversion of the yield curve. Overall, risks stabilised but remained elevated, especially liquidity and credit risk. While funds managed the transition to higher interest rates, concerns remained regarding the valuation of real-estate fund assets in a falling market.

**Consumers:** Sentiment among consumers remained weak amid geopolitical uncertainty and subdued growth, despite falling inflation. At higher interest rates, consumers raised holdings of bonds, both directly and via investment funds, and average performance of retail investments improved in 3Q23. Real-estate exposures via retail AIFs are a source of risk. .

(m) *TRV Risk Analysis: real estate markets – risk exposures in EU securities markets and investment funds*

On 10 January 2024, ESMA published its [first analysis](#) of the exposures the EU securities and markets and asset management sector have to real estate.

The analysis suggests that:

- debt levels in the real estate sector are elevated with wider risk implications from non-bank financial market players; and
- interlinkages with the banking system are important and arise through entity exposures and activities and through these, sector shocks may get transmitted across the EU financial system.

(n) *TRV Risk Analysis: risks posed by leveraged AIFs*

On 30 January 2024, ESMA published its TRV [article on the risks posed by leveraged AIFs in the EU](#).

ESMA sees potential risks in funds exposed to leverage and liquidity mismatches and confirms the risks posed by real estate ("RE") funds, in a context of declining volumes of transactions and falling prices in several jurisdictions.

The TRV report examines the framework under its [Guidelines](#) on the assessment of leverage-related systemic risk (Article 25 AIFMD), whereby NCAs may impose limits to the level of leverage employed by AIFMs. These include the measures taken by the Central Bank in respect of RE funds and liability-driven investment ("LDI") funds.

Existing liquidity mismatches in AIFs are particularly heightened by the high share of open-ended RE funds. ESMA notes this vulnerability could be systemically relevant in jurisdictions where RE funds own a large share of the RE market.

(o) *AIFs market report*

On 30 January 2024, ESMA published a [market report on EU alternative investment funds \(2023\)](#) as part of ESMA's monitoring framework on AIFs, including market development and key risk metrics, such as leverage and liquidity.

The markets report looks at the full AIF sector and specifically at the risks posed by leveraged AIFs, ESMA finds that:

- the size of the sector declined slightly (-3%) to EUR 6.8tn in 2022 and AIFs account for 36% of the EU fund industry. The fall in value was mainly driven by valuation losses for funds exposed to bonds and equities amid adverse market developments in 2022;
- RE funds face multiple risks related to leverage, market footprint, valuation discrepancies and liquidity mismatches;
- leverage for hedge funds remains very high and this may pose a risk of market impact. However, most of them also dispose of large levels of cash to address potential margin calls, which limits the risk of fire sales; and
- NCAs have reported risks posed by the LDI funds, which gain leveraged exposures to the UK government bond market. Risks have remained elevated, and the limits set after the severe stress experienced in September 2022 remain appropriate.

In light of these findings and recent TRV risk analysis, ESMA reports on the measures taken by authorities to address the risks identified, and will continue to work with the NCAs to meet ESMA's financial stability objective.

(p) *European single access point ("ESAP") technical standards (This is a further update to section 4.5(d) of the report covering the fourth quarter of 2023)*

On 8 January 2024, the ESAs published a [consultation paper](#) on the draft implementing technical standards regarding the tasks of the collection bodies and the functionalities of the ESAP

In respect of the ESAP search system functionalities, for non-financial entities, the main section of the statistical classification of economics activities (NACE) as defined in Regulation (EC) 1893/2006 is suggested. For financial entities, it is suggested that the classification system could build on existing definitions of financial entities, similarly to the classification adopted by ESMA in the context of derivatives reporting under Article 9 of EMIR.

ESMA is required to establish and operationalise the ESAP by 10 July 2027.

### 3.4 European Commission (the "Commission")

(a) *Future of the capital markets union ("CMU")*

On 11 March 2024, the Eurogroup issued a [letter](#) to the President of the Euro Summit and associated [statement](#) with proposed areas of action to advance the CMU project for the next EU legislative term.

These measures are formed around three priority areas:

- a) architecture – develop a competitive, streamlined and smart regulatory system, allowing funds to be better channelled into innovative EU businesses;
- b) business – ensure better access to private funding for EU businesses to invest, innovate and grow in the EU; and
- c) citizens – create better opportunities for EU citizens to accumulate wealth and improve financial security.

Specifically, these targeted measures include to:

- Improve conditions for institutional, retail, and cross-border investment in equity, in particular in growth/scale up venture capital through regulatory means, targeted tax incentives by member states or other measures at EU and national level.
- Bolster the EU's edge in sustainable finance by scaling up the impact of the EU framework in place and fostering the use of the provided finance toolkit by market participants to support their transition efforts. The letter invites member states to step up their efforts in supporting market participants in the uptake of sustainable finance tools and to address national barriers which slow down the use of the common EU framework.

The Eurogroup invites the Commission to continue its efforts to enhance the usability of the EU sustainable finance framework and to support stakeholders with its implementation and, where appropriate, to take steps to reduce administrative burden through enhancing clarity, consistency and ease of use based on an appropriate impact assessment. It also seeks the Commission to consider bringing forward the corresponding initiatives, as early as possible during the new legislative term and looks forward to completion of relevant legislative work by 2029.

On 19 March 2024, EFAMA in conjunction with the Eurogroup's call also released a related [publication](#) detailing the policy priorities of the asset management sector for the next five years, entitled "*Unlocking private investment to fund Europe's triple transitions: towards an enabling regulatory framework*".

- (b) *ELTIF Regulation RTS (This is a further update to section 4.4(a) of the quarterly report covering the fourth quarter of 2023)*

The Commission has published a [Communication](#) (dated 6 March 2024) explaining that it intends to adopt, with amendments, ESMA's draft RTS under Regulations 9(3), 18(6), 19(5), 21(3) and 25(3) of the ELTIF Regulation. The main reasons for the Commission's proposed amendments are detailed in a letter to ESMA, contained in an [Annex](#) to the Communication.

In its letter to ESMA, the Commission notes that the final report recognises the diversity of ELTIFs and that the ELTIF Regulation seeks to provide flexibility for ELTIF managers to pursue a broad range of investment strategies and objectives.

The Commission believes that ESMA's draft RTS do not sufficiently cater for the individual characteristics of different ELTIFs. Given this, the Commission considers it needs to take a more proportionate approach to the drafting of the RTS, particularly regarding the calibration of the requirements relating to redemptions and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF. The Commission also noted several contradictions in the cost disclosure requirements and proposal that the RTS should be amended to better align the ELTIF regulation with that of the PRIIPs regulation, MiFID and the AIFMD.

Accordingly, through the letter, the Commission informs ESMA that it intends to adopt the draft RTS once its proposed amendments have been taken into account and ESMA has made the necessary modifications to ensure compliance with the ELTIF Regulation.

Under procedural rules of the ESMA Regulation (as amended), within a period of six weeks, ESMA may amend the draft RTS on the basis of the Commission's proposed amendments and resubmit as a formal opinion. If, on the expiry of that period, ESMA has not submitted amended draft RTS, or has submitted draft RTS that are not amended in a way consistent with the Commission's proposed amendments, the Commission may either adopt the RTS with the amendments it considers relevant after which the RTS will then continue through the legislative process, or reject the RTS.

The Commission concludes by stating it is essential to underline that the draft RTS must conform to the legal mandate set out in the ELTIF Regulation and must respect the proportionality principle in allowing various liquidity fund set-ups while ensuring that liquidity risk is effectively managed.

- (c) *Political agreement on proposed AML Regulation and sixth money laundering Directive (This is a further update to section 2.4(a) of the monthly report covering January 2024)*

On 14 February 2024, the EU Council released texts of the following proposed legislation, which reflect the outcome of provisional political agreements:

- [compromise text](#) for the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "**AML Regulation**"); and
- [compromise text](#) for the proposed Directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (6223/24) (sixth money laundering Directive or "**MLD6**").

The provisional political agreements are subject to approval by the Council and the Parliament before proceeding through the formal adoption procedure.

The key aspects of the proposed AML Regulation include requirements on:

- accessibility of information on beneficial owners;
- an EU limit on large cash payments of €10,000; and
- enhanced vigilance regarding ultra-rich individuals.

The AML Regulation also expands the list of obliged entities to new bodies including football clubs and agents (from 2029), most of the crypto-asset sector (requiring crypto-asset service providers (known as CASPs) to comply with enhanced due diligence ("**EDD**") on their customers) and traders of luxury goods.

All obliged entities will also be required to apply EDD measures in respect of high-risk third countries whose AML and counter-terrorist financing (CTF) frameworks pose a threat to the integrity of the EU's internal market.

Key aspects of the proposed MLD6 include uniform EU supervision, greater powers for financial intelligence units, access for competent authorities to new registers and necessary information sources and harmonised content and access to beneficial owners' registers. Negotiators have agreed that persons with legitimate interest, including journalists, reporters, other media, civil society organisations, higher education institutions, will be able to access the register, including the interconnection at EU level for competent authorities, supervisory bodies, tax authorities, AML Authority, the European Public Prosecutor's Office, the European Anti-Fraud Office, Europol and Eurojust.

The draft legislative texts will now be finalised before the agreement is formally adopted by the Council and the Parliament.

On 12 March 2024, the EBA published a [call for advice](#) from the Commission regarding RTS and guidelines under the future AML and CTF framework. The EBA is to provide its advice by 31 October 2025.

(d) *Delegated regulation on high-risk third countries for AML purposes*

On 14 March 2024, the European Commission adopted a [Delegated Regulation](#) to amend the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies produced under Article 9(2) of the Fourth Money Laundering Directive ((EU) 2015/849) ("**MLD4**").

The list of countries in that delegated act is amended periodically to take account of information from international organisations and standard setters in the field of AML and CTF, such as the Financial Action Task Force ("**FATF**").

The Delegated Regulation will amend the Annex to Delegated Regulation (EU) 2016/1675 by:

- Deleting Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates from the list of third countries that have been identified as having strategic AML and CTF deficiencies.
- Adding Kenya and Namibia as third-country jurisdictions that have strategic deficiencies in their AML and CTF regimes, which pose significant threats to the EU financial system.

The Delegated Regulation will be submitted to the Council of the EU and the Parliament for scrutiny. If neither objects, it will enter into force 20 days after it is published in the OJ.

(e) *EU AI Act*

On 2 February 2024, the Council of the EU adopted the [compromise text](#) of the Regulation on laying down harmonised rules on AI (the "**AI Act**") and amending certain EU legislative acts (COM(2021) 206 final).

The AI Act aims to regulate the use and development of AI systems in the EU and ensure that fundamental rights, democracy, the rule of law and environmental sustainability are protected from high risk AI, while also supporting AI innovation in the EU.

The obligations under the AI Act will be phased in over a period of 36 months with the key obligations in place within 24 months. The AI Act constitutes the first comprehensive legal framework for AI and will apply to businesses who create or use AI systems as well as those who sell, distribute or import AI systems.

The Parliament is scheduled to consider the text at its plenary sitting on 10-11 April 2024 and if approved will enter into force shortly after publication in the OJ.

(f) *DORA delegated regulations (This is a further update to section 2.3(b) of the monthly report covering January 2024)*

On 22 February 2024, the Commission adopted the following delegated regulations supplementing DORA:

- [Commission Delegated Regulation](#) specifying the criteria for the designation of ICT third-party service providers as critical for financial entities (C(2024)896); and
- [Commission Delegated Regulation](#) determining the amount of the oversight fees to be charged by the lead overseer to critical ICT third-party service providers and the way in which those fees are to be paid (C(2024)902).

The delegated regulations reflect mandate under Article 31(6) and Article 43(2) of DORA respectively. The Council of the EU and the Parliament will now scrutinise the Delegated Regulations. If neither objects, they will be published in the OJ.

(g) *MiCA delegated regulations (This is a further update to section 4.2(d) of the quarterly report covering the second quarter of 2023)*

On 22 February 2024, the Commission adopted the following delegated regulations supplementing MiCA pursuant to its mandates:

- [Commission Delegated Regulation](#) specifying the fees charged by the EBA to issuers of significant asset-referenced tokens ("ARTs") and issuers of significant e-money tokens ("EMTs") (C(2024)897).
- [Commission Delegated Regulation](#) specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant ARTs and issuers of significant EMTs (C(2024)898).
- [Commission Delegated Regulation](#) specifying certain criteria for classifying ARTs and EMTs as significant (C(2024)906).
- [Commission Delegated Regulation](#) specifying the criteria and factors to be taken into account by ESMA, the EBA and competent authorities in relation to their intervention powers (C(2024)907).

The Council of the EU and the Parliament will now scrutinise the delegated regulations. If neither objects, they will be published in the OJ.

(h) *Speech on shortening the settlement cycle in the EU*

On 25 January 2024, Commissioner McGuinness delivered a [speech](#) at the Commission roundtable on shortening the settlement cycle in the EU.

Ms McGuinness' remarks noted that "when it comes to T+1, the question is no longer if, but how and when it will happen here in the EU".

(i) *Non-bank financial intermediaries ("NBFIs")*

On 24 January 2024, the Commission published a [report](#) on its review of the EU macroprudential framework for credit institutions, the systemic risks relating to NBFIs and their interconnectedness.

On NBFIs, the Commission will collect further evidence on missing tools, potential gaps in existing tools to meet macroprudential objectives and on the effectiveness and consistency of macroprudential policies for NBFIs in the EU. In 2024, this work will include a targeted consultation on the need for macroprudential policies for NBFIs, including asset managers, as well as a consultation on the review of the Securities Financing Transaction Regulation ((EU) 2015/2365) (SFTR), aimed at improving transparency on funding and lending transactions and allowing for better monitoring of risks resulting from non-bank credit intermediation.

### 3.5 European Systemic Risk Board ("ESRB")

On 1 February 2024, the ESRB published a follow-up [report](#) on vulnerabilities in the residential real estate ("RRE") sectors in EEA countries.

Chapter 4 of the report sets out the results of the ESRB's medium-term macroprudential policy assessments, together with some policy suggestions for individual countries. The ESRB assessment of Ireland notes current measures are deemed to be appropriate and sufficient to address the underlying risks. Nevertheless, the NCA should continue monitoring vulnerabilities. As the risk assessment remains largely unchanged, most of the policy suggestions from the original assessment remain valid.

The report will be of interest to managers with exposures to the RRE sectors.

### 3.6 EFAMA market insights on cost of UCITS

EFAMA released a [new issue](#) of its Market Insights series titled '*The cost of UCITS available to retail investors - key determinants based on clean share classes*'. The report explores the core factors that impact the cost incurred by retail investors in equity and bond funds focusing on clean share classes, i.e. the price paid by retail investors excluding distribution and advice costs.

The key findings of the report are summarised below:

- Fund size, age, investment strategy and geography are key determinants of UCITS costs.
  - **Fund size** is a pivotal factor influencing costs. Larger share classes exhibit relatively lower average costs compared to smaller ones across all sub-categories. This is attributed to economies of scale enabling funds to spread fixed costs over a larger asset base.
  - **Newer share classes** tend to incur lower costs. As they lack an established performance track record, newer funds often charge a lower fee to attract investors.
  - Factors such as investment strategy and geographical focus also impact fund costs. Funds investing in specific asset classes or geographic regions may entail higher research costs.
- The simple average cost of clean share classes of equity and bond UCITS aimed at retail investors continued to decline in recent years.
  - This trend can be ascribed to the surge in passive investing, increasing cost transparency, and advancements in technology driving down operational costs. The average product cost of active and passive equity UCITS available to retail investors fell to 1.04% and 0.27% respectively in 2022.
  - The simple average cost of UCITS clean share classes is lower than that of US mutual funds, however the US average is significantly lower when weighted by assets (primarily attributed to the size and high degree of integration of the US mutual fund market).

### 3.7 FATF

#### (a) *Statement of jurisdictions under increased monitoring*

On 23 February 2024, FATF [published](#) a statement of jurisdictions under increased monitoring (referred to as the 'grey list'). The statement outlines that following significant progress in improving their respective AML/CFT regimes, Barbados, Uganda and UAE are no longer subject to its increased monitoring.

#### (b) *Guidance on the transparency and beneficial ownership of legal arrangements*

On 11 March 2024, FATF published the final version of its risk-based [guidance](#) on the transparency and beneficial ownership of legal arrangements.

The new guidance on recommendation 25 aims to help countries and the private sector better understand how transparency requirements apply to legal arrangements. It provides practical guidance on how to understand and assess the money laundering and terrorist financing risks associated with trusts and similar legal arrangements. The guidance highlights the importance of international co-operation, given that legal arrangements may potentially be abused to facilitate cross-border money laundering or terrorist financing.

### 3.8 Financial Stability Board ("FSB")

- (a) *Report on MMF reform (This is a further update to section 3.9(d) of the quarterly report covering the third quarter of 2023)*

On 27 February 2024, the FSB [published](#) a thematic peer review report on MMF reform proposals made in its October 2021 report.

The main MMF vulnerability identified by jurisdictions was the mismatch between the liquidity of fund asset holdings and the redemption terms offered to investors, which makes MMFs susceptible to runs from sudden and disruptive redemptions.

The FSB found uneven progress across FSB member jurisdictions in implementing the 2021 policy proposals and made a number of recommendations. It concludes that, based on the vulnerabilities reported in individual jurisdictions, further progress on implementing the FSB policy toolkit is needed to enhance MMF resilience and limit the need for extraordinary central bank interventions during times of stress.

- (b) *Work programme for 2024*

On 24 January 2024, the FSB published its [work programme](#) for 2024.

Priority areas of work and new initiatives include the following:

- *Enhancing the resilience of NBFIs.* The FSB will continue to advance its work programme for enhancing NBFIs resilience. This includes exploring policy recommendations or options for non-bank financial leverage, enhancing liquidity preparedness of non-bank market participants for margin and collateral calls and conducting new work on the functioning and resilience of repo markets.
- *Harnessing the benefits of digital innovation while containing its risks.* A key FSB focus for 2024 and beyond is on ensuring the effective implementation of the agreed global regulatory and supervisory framework for crypto-asset activities and markets and global stablecoin arrangements. The FSB will also complete work on the financial stability implications of tokenisation, prepare a report for the G20 on recent developments in artificial intelligence (AI) and design a format for cyber incident reporting exchange (FIRE)
- *Addressing financial risks from climate change.* The FSB will continue to co-ordinate international work in this area. This will include analysis of the relevance of transition plans for financial stability and a stocktake of regulatory and supervisory initiatives related to the identification and assessment of nature-related financial risks.

The [Annex](#) to the work programme provides an indicative timeline of the FSB's planned publications in 2024.

### 3.9 Government legislation programme - spring session 2024 (This is a further update to section 3.10 of the report covering the third quarter of 2023)

On 16 January 2024, the Irish government published its spring [legislative programme](#).

- The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill is listed in the priority legislation with heads of the bill listed as in preparation. On 15 March 2024, the Minister of State for Trade Promotion, Digital and Company Regulation published the [General Scheme of the Companies \(Corporate Governance, Enforcement and Regulatory Provisions\) Bill 2024](#). The government approved the priority drafting of the Bill along the lines of the General Scheme.

- The Miscellaneous Provisions (Transparency and Registration of Limited Partnerships and Business Names) Bill 2023 aimed at modernising the Limited Partnership Act 1907 remains listed in the other legislation (non-priority) list with heads of the bill listed as in preparation.
- The Financial Services and Pensions Ombudsman (Amendment) Bill to amend the Financial Services and Pensions Ombudsman (FSPO) Act 2017, to take account of the 'Zalewski' ruling and update elements where the FSPO could be viewed as administering justice is currently at the second stage of Dáil approval.

### 3.10 IOSCO

#### (a) *Investment Funds Statistics Report*

On 30 January 2024, IOSCO published an [Investment Funds Statistics Report](#) for 2023.

The report contains information from 28 IOSCO member jurisdictions including Ireland for the 2022 reporting year as well as risks and insights on hedge funds, open-ended and closed-ended fund trends.

### 3.11 Sustainable Finance - ESG developments

#### (a) *Consultation on Green Bond Regulation (This is a further update to section 4.11(l) of the report covering the fourth quarter of 2023)*

On 26 March 2024 ESMA published its [consultation](#) on draft RTS and draft implementing technical standards (ITS) related to the registration and supervision of external reviewers under Regulation (EU) 2023/2631, the EU Green Bond Regulation ("EuGB"). The EuGB entered into force on 21 December 2023 and will apply from 21 December 2024. This is the first of two consultation papers on the appropriate implementation of the EuGB.

ESMA's proposals relate to the registration and supervision of entities interested in becoming external reviewers of EU Green Bonds and aim to clarify the criteria used for assessing an application for registration by an external reviewer. In its proposals, ESMA aims to standardise registration requirements and contribute to developing a level playing field through lower entry costs for applicants.

The consultation will close on 24 June 2024. ESMA will consider the feedback received to this consultation and will submit the draft RTS and ITS to the European Commission by 21 December 2024.

#### (b) *Consolidated Q&A on the SFDR (This is a further update to section 4.13(a) of the report covering the second quarter of 2023)*

On 12 January 2024, the ESAs published an updated version of its [consolidated Q&A](#) on the SFDR and SFDR Delegated Regulation.

The Q&As were first published in May 2023 and the sole change to this version is to delete wording in question 1 in section V (Financial product disclosures) regarding tracking Climate Transition Benchmark (EU CTB) or EU Paris-aligned Benchmark (EU PAB) no change was made to the given answer.

The question was amended on 12 December 2023.

(c) *Platform on Sustainable Finance (the "Platform") compendium of market practices*

On 29 January 2024, the Platform released a [report](#) on a Compendium of Market Practices, which explores the impact of the EU Taxonomy and the wider sustainable finance framework on facilitating the transition to net zero for financial and non-financial actors. The report constitutes voluntary guidance and is intended to set the direction for future priorities on the implementation of the EU sustainable finance framework. The report focuses on seven stakeholder groups, including market practices for investors (described at section 3 of the report).

Highlights from the report include:

Early evidence on the use of the EU sustainable finance framework for business strategy, transition planning and target setting suggests that the market has started using the EU sustainable finance framework to prepare for regulatory compliance, in addition to supporting their sustainable business and transition planning strategies on a voluntary basis.

The trend of using financial products and instruments, including green and sustainability-linked bonds, loans and investment funds, is expected to accelerate in the future.

Reporting, monitoring and assurance. Despite challenges, most market participants have started to adapt their practices to comply with the EU sustainability reporting requirements. Taxonomy alignment reporting for financial institutions is expected to improve in the future in parallel with corporate reporting, as data collection and verification processes are implemented.

The report is accompanied by an [annex](#), which includes concrete case studies for each stakeholder group, highlighting the practical application of sustainable finance tools. The case studies highlight the first evidence that the EU sustainable finance framework is working on the ground and shows how market actors are using it including beyond regulatory compliance.

The report also identifies data and implementation challenges regarding the EU taxonomy and the wider sustainable finance toolkit, which need to be further improved to fully support actors in transitioning their business models to align with the EU's sustainability objectives. This includes the Platform's future work advising the Commission on how to improve the usability of the do no significant harm technical screening criteria, advising on the consistency and interoperability of transition plans and advising on the feasibility of a SFDR labelling or classification system.

(d) *ECON scrutiny paper – ESA report on SFDR Delegated Regulation (This is a further update to section 4.11(a) of the report covering the fourth quarter of 2023)*

On 23 January 2024, the European Parliament has published a [briefing/scrutiny paper](#) on the proposed draft amendments to Delegated Regulation (EU) 2022/1288 (the "SFDR RTS") which were discussed at an [European and Monetary Affairs \(ECON\) meeting](#) scrutiny session.

Reports from an exchange of views with the Commission at the scrutiny session on the main aspects that are going to be reviewed within the SFDR RTS suggest that they will be delayed beyond the end of the current EU legislative mandate.

(e) *Joint industry letter on SFDR (This is a further update to section 4.11(a) of the report covering the fourth quarter of 2023)*

On 5 February 2024, EFAMA published a joint [industry letter](#) requesting the European Commission to delay the proposed revised set of regulatory technical standards under SFDR until the broader review of SFDR is complete.

In their letter to the Commission, the trade bodies express concern that the "lack of co-ordination of these major review projects under SFDR puts investors' confidence in sustainable investment

solutions and the reliability of the EU standards for sustainable disclosures at risk". As such, they "strongly support the Commission delaying the adoption of the level two measures proposed by the ESAs to reconsider changes to the SFDR holistically". The letter also notes the finance industry will also require "appropriate grandfathering measures, and at least a year for implementation after the revised level two texts are published in the OJ".

- (f) *Regulation on ESG ratings (This is a further update to section 4.13(a) of the report covering the second quarter of 2023)*

On 14 February 2024, the EU Council released the provisional political agreement on a [compromise text](#) on the proposed Regulation on the transparency and integrity of environmental, social and governance (ESG) rating activities.

The Parliament has also published a [press release](#) on the agreement. The press release notes that the proposed Regulation will provide that financial market participants or financial advisers will be required to disclose the methodologies used in ESG ratings they use as part of their marketing communications. The proposed Regulation provides for this through an amendment of the SFDR.

The provisional political agreement is subject to approval by the Council and the Parliament before going through the formal adoption procedure.

Our recent [briefing](#) summarises the key elements of the proposed Regulation.

- (g) *ESMA TRV article: impact investing*

On 1 February 2024, ESMA published its [TRV Article](#) entitled 'Impact investing – Do sustainable development goals ("SDG") funds fulfil their promises?'

The article examines 'impact' claims in funds including those based on the United Nations SDGs. The article highlights some of the challenges in assessing real-world impact claims and show that SDG funds do not significantly differ from non-SDG counterparts or ESG peers regarding their alignment with the UN SDGs and that there is room to establish clearer requirements for these strategies.

ESMA concludes that its findings raise investor protection concerns and questions as to whether funds claiming to contribute to the SDGs are actually fulfilling their promise to investors.

- (h) *ESMA working paper: ESG funds' performance during 2020 market turmoil*

On 15 February 2024, ESMA published a [working paper](#) entitled 'ESG funds during the 2020 COVID-19 market turmoil: performance and flows' which it notes will help influence its work on sustainable finance and retail investor protection.

ESMA analysed the performance of 2,581 EU-domiciled UCITS from mid-February 2020 to the end of June 2020. Their analysis showed that ESG active UCITS outperform non-ESG active UCITS during the ten weeks of the first COVID-19 outbreak and received higher net flows than their non-ESG peers. Funds with a high ESG rating also reported higher returns over the whole period compared to funds with a low ESG rating. There was no statistically significant difference in net flows between funds that employed exclusion strategies and those that do not.

ESMA concluded that sustainable characteristics matter for investors even in a period of crisis as ESG funds and funds granted with a high sustainability rating by Morningstar are associated with higher net flows. It also reported the positive role of sustainable attributes on the investment fund flows during the crisis, potentially suggesting that investors perceive sustainability as providing a hedge in troubled times.

- (i) *Sector reporting requirements under CSRD delayed by two years (This is a further update to section 4.11(dd) of the report covering the fourth quarter of 2023)*

On 7 February 2024, the Council of the European Union and the Parliament [announced](#) a provisional agreement on a Directive amending the Corporate Sustainability Reporting Directive ("CSRD").

The proposed [amending Directive](#) provides that the sector-based ESRS and specific standards for large non-EU companies will have an adoption deadline of 30 June 2026 rather than 30 June 2024. The agreement is intended to limit reporting requirements to the minimum and gives companies time to implement the ESRS and prepare for the sectoral ESRS.

The provisional agreement reached with the Parliament now needs to be endorsed and formally adopted by both institutions.

EFRAG continues to provide non-authoritative guidance to questions posted on its ESRS [Q&A platform](#).

- (j) *Climate Risk and Sustainable Finance Forum - Capacity Building Working Group - Remarks by Deputy Governor Sharon Donnery*

On 27 March 2024, the Central Bank published [remarks](#) by Deputy Governor, Sharon Donnery at the launch of the [Report from the Climate Risk and Sustainable Finance Forum's Working Group on Capacity Building](#).

Ms Donnery noted the recommendations on training and capacity building status in Financial Market Participants. She outlined that building capacity by enhancing understanding of climate risk, seeking to address those risks through upskilling, identifying useable tools and frameworks, raising awareness, and taking leadership applies to all participants in the financial system – including regulators.

While the report is the work of the climate forum and does not represent Central Bank requirements or guidance the Central Bank are supportive of many of the recommendations contained in the report.

- (k) *Corporate Sustainability Due Diligence Directive ("CSDDD") update (This is a further update to section 4.11(h) of the report covering the fourth quarter of 2023)*

On 15 March 2024, following earlier unsuccessful attempts to endorse the provisionally agreed text the Council of the EU proposed a new compromise CSDDD text. The CSDDD establishes due diligence rules to ensure large EU companies effectively tackle adverse human rights and environmental impacts caused by their economic activities.

The revised text significantly reduces the companies in scope as thresholds for EU companies have more than doubled, with a requirement for more than 1,000 employees and a net worldwide turnover of more than EUR450 million. Regulated financial undertakings that meet the threshold criteria are required to comply. Although the recitals state that regulated financial undertakings are only subject to due diligence obligations for the upstream part of their chain of activities,

The compromise text also extends the timeframe for compliance, as the majority of companies will not be required to comply until five years after the CSDDD enters into force (which is likely to be 2029). The revised CSDDD is on the European Parliament plenary agenda for adoption on 24 April 2024. Based on the proposed transposition and application deadlines, the first companies affected will be required to comply with the CSDDD in 2027.

- (l) *Commission adopts delegated regulation relating to sustainability impact disclosures for simple, transparent and standardised ("STS") securitisations*

On 5 March 2024, the Commission adopted a [delegated regulation](#) supplementing the Securitisation Regulation ((EU) 2017/2402) with regard to regulatory technical standards specifying, for simple, transparent and standardised non-ABCP traditional securitisation, and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors.

Under the Capital Markets Recovery Package, the Securitisation Regulation was amended to introduce new optional disclosure provisions for STS securitisations. The delegated regulation aims to standardise the type and presentation of information an originator may opt to disclose about the adverse impacts of assets financed by underlying exposures, on the environment and other sustainability factors. Such disclosure is intended to ensure investors have all the necessary information to make informed decisions regarding the sustainability impact of their investments.