# Asset Management & Investment Funds Update – June 2019


## TEMPER(ATURE)S RISE OVER UK MARKET TRADING

In recent weeks, both ESMA and the FCA have published statements on the possibility of UK markets becoming third-country trading venues in the event of a no-deal Brexit. While the EU has introduced certain measures designed to mitigate the adverse impacts of such a scenario, it appears the UK's proposed solution of an EU equivalence declaration for UK markets is unlikely to be forthcoming and may, in fact, become more difficult to attain under proposed changes to the EU's current equivalence regimes.

***ESMA statements of 19 March & 29 May 2019 on the use of UK markets in a no-deal Brexit scenario***

On 29 May 2019, ESMA published a follow up to its statement of 19 March 2019 detailing its proposed approach to the application of the EU 'share trading obligation' (STO) in the event of a no-deal Brexit.

In short, the STO requires investment firms to trade those shares which are traded systematically and frequently in the EU, on an EU regulated market. Therefore, when the UK leaves the EU, investment firms would be precluded from using UK markets for trading shares subject to the STO as UK markets will no longer be eligible venues under the STO.

ESMA's approach to the application of the STO in the event of a no-deal Brexit, as outlined in its original statement on 19 March, required EU or EEA ISIN shares to be traded on an EU regulated market but allowed GB ISIN shares, falling within the ambit of the STO, to be traded on UK markets, unless those shares qualified as liquid in the EU27.

A list of ISINs that, under the above approach, would be required to trade on an EU regulated market was appended to ESMA's March statement. This list included 14 shares with a GB ISIN. The inclusion of these GB ISIN shares was as a result of the qualification to the provision allowing GB ISIN shares to be traded on UK markets i.e. unless those shares qualify as liquid in the EU27.

In its latest statement on 29 May, ESMA has sought to further mitigate the adverse effects of the STO in the event of a no-deal Brexit by expanding the list of shares, excluded from the STO, to cover all GB ISIN shares. Shares with an EU or EEA ISIN are subject to the STO, whilst GB ISIN shares are outside the scope of the STO.

***FCA statement of 29 May 2019 on the use of UK markets in a no-deal Brexit scenario***

Responding swiftly, the FCA also published a statement on 29 May 2019 in which it disputed the effectiveness of ESMA's approach to delineate on the basis of ISINs in the application of the STO; noting that this approach would "still cause disruption to investors, some issuers and other market participants, leading to fragmentation of markets and liquidity in both the EU and UK." The FCA's concern, which has previously been highlighted by the LSE and others, relates to EU ISIN shares which are dual-listed and have their centre of market liquidity on UK markets. The FCA regards an EU decision on the equivalence of UK markets as the best way to address any overlap in share trading obligations which might arise once the UK leaves the EU and establishes its own STO.

***ESMA speech of 4 June 2019 featuring commentary on the use of UK markets in a no-deal Brexit scenario***

On 4 June 2019, in a speech delivered in Dublin to the Federation of European Securities Exchanges (FESE), the ESMA Chair addressed ESMA's approach to the application of the STO in the event of a no-deal Brexit.

The Chair commented specifically, in what appeared a direct response to the FCA's statement of 29 May, on the issue of, and the EU's efforts to reduce and avoid, the fragmentation of markets. Noting the inevitability of fragmentation where global financial markets are supervised and regulated at a national or regional level, the Chair pointed to the EU's "extensive equivalence and recognition framework" which has "provided the most far-reaching market access for third country firms by fully relying on the rules and supervision in the home country."

Acknowledging that, despite ESMA's amendments, the application of the STO will fragment markets, the Chair, perhaps to highlight the need for a 'UK solution' to a 'UK problem', pointed out that the fragmentation caused by the STO "is inherently related to the UK's decision to leave the EU and the risk of a no-deal Brexit". On the matter of an

EU equivalence decision for UK markets, as called for by the FCA, the Chair noted that "Under the Withdrawal Agreement and the related Political Declaration, equivalence is envisaged, and in this scenario, we would continue to have open markets between EU and UK venues for the trading of equity." The Chair also cited concerns arising from the FCA's decision to "only disclose the application of the UK STO once it is clear there is a no-deal Brexit." According to the Chair, "this may mean that clarity will only be provided a few days, or perhaps even a few hours, ahead of a no-deal situation." Appealing to the FCA to reconsider this timing to allow market participants to prepare properly for the risk of a no-deal, the Chair said he "sincerely [hoped] that this timing is reconsidered, and that clarity is provided well-ahead of the October Brexit date."

***EU is changing and strengthening its approach to equivalence***

In his speech to the FESE of 4 June, the Chair spoke to the future of cross-border regulation and the EU's third country arrangements and was clear that the "EU approach [] is changing" and, as highlighted in the context of ESMA's recognition of third country CCPs, full-reliance on third country rules and supervision is "not appropriate for systemically relevant" entities. The Chair spoke of the EU's improved approach to cross-border regulation and supervision and ESMA's future role, on completion of the ESA's review, in "monitoring and [reviewing] equivalence decisions" which "will be conducted more frequently to detect differences between EU and non-EU regulation and supervision on time." Considering the following views expressed by the Chair, it would seem we are likely to see an increase in the promulgated issues associated with relying on 'point-in time' equivalence decisions as a solution for third countries seeking access to EU markets in the future;

- cross-border regulation and supervision will become more proportionate and areas will be examined in which such increased proportionality may be adopted;

- full reliance on third country regulation and supervision only when there are no systemic risks for the EU;

- in cases where there may be systemic risks to the EU, the relevant toolbox available to EU regulators will become stronger, monitoring and reviews of equivalence decisions more regular, and EU legislation will apply directly;

- the historic approach to EU equivalence decisions has been outcome-based as opposed to rules-based which compares regulatory systems on a line-by-line basis, but the changing EU approach will in some cases result in more granular assessments for home country reliance; and

- continued co-operation with other regulators and active participation in general standard-setting bodies like IOSCO and the FSB.

# REVISED SHAREHOLDER RIGHTS DIRECTIVE BRINGS FUNDS IN SCOPE

## SRD II HEADLINES

- **SRD I & II are aimed at enhancing the governance of companies listed on a regulated market.**
- **SRD II was published in 2017 and significantly reforms the first Directive of 2007 (SRD I).**
- **SRD II aims to tackle issues arising from a lack of engagement by shareholders of listed companies which persisted following the introduction of SRD I.**
- **UCITS and AIFs were exempted under Irish law from the provisions of SRD I .**
- **Member States retain discretion to exempt UCITS and AIFs, but SRD II specifically applies transparency provisions to these entities, as well as to UCITS management companies and AIFMs, where they invest in listed companies.**
- **In-scope funds and fund managers are obliged (on a comply or explain basis) to put in place a shareholder engagement policy and may be obliged to comply with additional transparency requirements.**
- **Questions remain over how funds and fund managers comply with requirements to make disclosures to a subset of investors.**
- **Compliance impact of new requirements may be reduced due to overlaps with existing UCITS and AIFM regimes, use of the 'comply or explain' approach and the application of proportionality.**

By 10 June 2019, Member States must adopt national legislation to bring the Revised Shareholder Rights Directive (**SRD II**) into national law.

SRD II amends the first Shareholder Rights Directive (**SRD I**) which was published in 2007 with the objective of enhancing corporate governance in EU companies listed on a regulated market by facilitating, particularly on a cross-border basis, the exercise of voting rights of company shareholders. SRD II builds on the SRD I premise that "effective shareholder control is a pre-requisite to sound corporate governance" of listed companies through the removal of barriers to shareholder engagement and further aligning the interests of shareholders and the investee company.

Ireland, along with several other Member States, has yet to publish the necessary legislation to bring SRD II into national law; however, Irish authorities continue to expect to meet the deadline of 10 June. With this date fast approaching and in the absence of any transitional provisions under the Directive, SRD II transposing legislation is expected to apply immediately upon publication, which is anticipated very shortly.

***Application***

SRD II will become law in Ireland from the date of publication of the transposing legislation.

The deadline for transposition is 10 June 2019 and the legislation is expected very shortly.

UCITS and AIFs (as defined under the AIFMD) (**Funds**) that invest in shares of companies listed on a regulated market (as defined under MiFID II) are, in their capacity as shareholders of such companies, in scope of SRD II.

As a result of Ireland's decision to exercise the discretion afforded Member States under SRD I, listed Funds (as investee companies) were exempted under Irish law from the requirements of that Directive. While SRD II retains the discretion for Member States to exempt Funds from certain of the provisions, this does not extend to the provisions contained in Chapter 1b 'Transparency of institutional investors, asset managers and proxy advisors'. Therefore, even if Ireland again exercises its discretion, as it is expected to do, and exempts listed Funds from those provisions of SRD II relating to obligations of investee companies, Funds, as shareholders of listed companies, will nonetheless be subject to Chapter 1b provisions under SRD II.

SRD II also applies the Chapter 1b transparency provisions to UCITS management companies and AIFMs (**Fund Managers**) to the extent that they invest in the shares of EU companies listed on a regulated market and to MiFID portfolio management firms.

SRD II means the introduction, for Funds and Fund Managers, of requirements for enhanced engagement with investee companies, the incorporation of shareholder engagement into investment strategies and disclosure of how such strategies benefit the medium to long-term performance of investors.

This briefing focusses on the impact of SRD II on Funds and Fund Managers. While MiFID portfolio management firms are also subject to the Chapter 1b provisions of SRD II, they are not dealt with in this briefing as they may have additional obligations, as well as differing approaches to compliance, due to their structure, operation and governing regime.

***New Requirements***

If the Irish legislation, as is expected, exempts listed Funds from the investee company obligation provisions of SRD II, then the only SRD II requirements applicable to Funds and Fund Managers, in their capacity as shareholders of companies listed on a regulated market, will be the relevant transparency provisions contained in Chapter 1b of SRD II.

These are:

1. a requirement to adopt, or explain if it is determined not to adopt, a policy describing the Funds and Fund Managers engagement with the listed companies in which they invest and hold shares; and
2. an obligation to make prescribed disclosures to life assurance companies and occupational pension schemes (**Institutional Investors**) invested in the AIF or UCITS.

***1. Engagement Policy – 'comply or explain' requirement***

Under Article 3g, SRD II, Funds and Fund Managers are required to, (or publicly disclose, on their websites or other means accessible online, a clear and reasoned explanation why they have chosen not to):

a) develop an engagement policy describing how they incorporate engagement with investee companies into their investment strategies. The engagement policy should describe how:
   - investee companies are monitored on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance;
   - dialogues are conducted with investee companies;
   - voting rights and other rights attached to shares are exercised;
   - they co-operate with other shareholders;
   - they communicate with relevant stakeholders of the investee companies; and
   - they manage actual and potential conflicts of interests in relation to their engagement.

b) publicly disclose on their websites (or such other means that are easily accessible online), on an annual basis and free of charge, how their engagement policy has been implemented, including:
   - a general description of voting behaviour;
   - an explanation of the most significant votes;
   - the use of the services of proxy advisors[1]; and
   - how they have cast votes in general meetings of companies in which they hold shares unless such disclosure may be excluded on the basis that "the votes are insignificant due to the subject matter of the vote or the size of the holding in the company".

*Compliance considerations for Funds and Fund Managers*

- 'comply or explain'

SRD II does not provide guidance for Funds and Fund Managers on what would constitute a 'reasoned explanation' for determining not to adopt an engagement policy. While not yet published, it is considered unlikely that the Irish transposing legislation will go further than the terms of SRD II and so a case-by-case assessment will be necessary in determining whether or not it is appropriate for a particular Fund or Fund Manager to comply with the requirement to adopt an engagement policy.

- non-disclosure of insignificant votes

SRD II provides limited guidance on what constitutes an insignificant vote which is not required to be disclosed per the requirement in paragraph (b) (last bullet) above. The recitals to SRD II provide that insignificant votes may include votes cast on purely procedural matters or votes cast in companies where the Funds' or Fund Managers' have a very minor stake compared to the Funds' or Fund Managers' holdings in other investee companies. Funds and Fund Managers are permitted to set their own criteria regarding which votes are insignificant on the basis of the subject matter of the vote or the size of the holding in the company and apply them consistently.

- overlapping requirements

Funds and Fund Managers should be aware of the significant levels of overlap between these SRD II requirements and those applied under the governing regimes of UCITS and AIFMs. AIFMs and UCITS management companies are both required, under their respective regimes, to develop 'adequate and effective strategies for determining when and how voting rights [will be] exercised' and to make available to investors, free of charge, 'a summary description of the [voting right] strategies [and] details of the action taken on the basis of those strategies'. Such voting rights strategies must include measures and procedures for 'monitoring relevant corporate actions; ensuring the exercise of voting rights is in accordance with the investment objectives and policy of the relevant [fund]; and preventing or managing any conflicts of interest arising from the exercise of voting rights'.

[1] 'Proxy advisory' means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions, by providing research, advice or voting recommendations that relate to the exercise of voting rights.

***2. Transparency requirements***

Where a Fund or Fund Manager has entered into an arrangement to invest on behalf of an Institutional Investor, SRD II requires the Fund or Fund Manager to make certain annual disclosures to such Institutional Investors. Such disclosures include:

- how the investment strategy, and its implementation, complies with arrangements with the Institutional Investor and contributes to the medium to long-term performance of the assets of the Institutional Investor or the Fund;
- the key material medium to long-term risks associated with investments made;
- portfolio composition, turnover and turnover costs;
- the use of proxy advisors for the purpose of engagement activities;
- securities lending policy and its impact on engagement with investee companies;
- whether investment decisions are made on the basis of evaluation of the medium to long-term performance of the investee company; and
- whether conflicts of interest have arisen, the nature of those conflicts and the manner of dealing with them.

*Compliance considerations for Funds and Fund Managers*

➢ practical difficulties

The FCA, in its consultation published in January 2019 on the introduction of SRD II (CP19/7**), acknowledged there were 'practical challenges' for Funds and Fund Managers in complying with the above transparency requirement.

Typically, an investment in a fund is not by way of a bilateral arrangement between the investor and the Fund or the Fund Manager. Funds and Fund Managers are unlikely to be aware of whether an investor in a Fund is in fact an Institutional Investor and so entitled to the information required to be disclosed under SRD II. Irish regulated funds are obliged to treat investors equitably which may preclude the provision of information to one, but not all investors in the Fund.

Interestingly, the FCA considered that Fund Managers could address the difficulty presented by the absence of bilateral investor arrangements by awaiting a request for the Directive information from an investor thus making them aware that they have an Institutional Investor in scope of the Directive. The Fund Manager could then provide the information to the Institutional Investor on an annual basis until they are told that the Institutional Investor no longer has an investment in the fund.

On 30 May 2019, the FCA published its policy statement on SRD II incorporating feedback to its consultation and final rules. However, in its Policy Statement the FCA notes its decision not to provide additional guidance on the transparency requirements so as to avoid being overly prescriptive and unduly constraining firms in choosing how "to explain their offerings in different ways" and for investors to "judge whether or not that offering meets their needs".

We await the transposition of SRD II into Irish law to see if the legislation provides any means of addressing the compliance difficulties cited for Funds and Fund Managers.

➢ overlapping requirements

The overlap between SRD II and the UCITS and AIFM regimes is again evident in a comparison of the extensive shareholder reporting obligations currently imposed on Funds and Fund.

***Next Steps***

Funds and Fund Managers should now:

- Consider the impact of the new requirements on their existing structures, particularly the extent to which they may already be in compliance due to the overlap with the UCITS and AIFM regimes.
- Determine whether, or not, they will comply with the requirement to adopt an engagement policy and, if not, the reasoned explanation for not complying.
- If applicable, put in place an engagement policy and systems to address any additional disclosures to shareholders under the transparency requirements.

# EMIR REFIT FINALISED AND IN FORCE FROM 17 JUNE 2019

On 28 May 2019, a welcome reprieve from EMIR clearing obligations for UCITS and AIFs invested in OTC derivatives came into effect with the publication of the EMIR Refit Regulation. The Refit Regulation will enter into force 20 days following its publication i.e. 17 June 2019. As and from this date, any UCITS and AIFs which were gearing up to commence central clearing of OTC derivative transactions with effect from 21 June 2019, will be exempt from the requirement to centrally clear trades provided they do not exceed any of the clearing thresholds set down by EMIR.

***Brief background to EMIR Refit and the exemption from central clearing***

The obligation on financial counterparties (including UCITS, UCITS management companies and AIFMs) for OTC derivative contracts to be cleared through central counterparties was introduced, on a phased basis, when EMIR came into force in August 2012. Central clearing was one of the key obligations placed on EU derivatives market participants under EMIR, along with the phased implementation of risk mitigation techniques for OTC derivatives not cleared via a CCP and the reporting of derivatives to a trade repository.

The burdensome nature of the clearing obligation for smaller counterparties, such as funds, was first formally recognised in 2015 when EMIR was amended to delay, on a phased basis, the application of the clearing obligation by reference to different categories of financial counterparties (**FCs**). Four categories of FCs were created, with most funds belonging to category 3 for smaller FCs who were not already clearing and whose level of activity in OTC derivatives was below the threshold of €8billion, calculated at the level of the sub-fund on the basis of the aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for January, February and March 2016.

At this point, FCs were required to calculate their aggregate month-end average derivative positions between March and 21 May 2016 to determine if they belonged in Category 3 and could avail of the stay on the obligation to commence clearing:

- in respect of interest rate OTCs until 21 June 2017
- in respect of credit derivatives until 9 February 2018

In 2017, the difficulties for Category 3 FCs with clearing derivatives was again recognised and EMIR was further amended to again postpone the dates for clearing obligations to take effect; this time until 21 June 2019.

"EMIR Refit" is the latest amendment to EMIR to differentiate Category 3 FCs from other FCs and instead of postponing the clearing obligation, it exempts FCs who do not exceed the clearing thresholds from the clearing obligation. As was the case in 2016 for the determination of Category 3 status, FCs will need to undertake a calculation to determine if they belong to the category of FCs which are exempt from the clearing obligation.

***How do I qualify for the clearing exemption?***

To avail of the exemption from clearing, the gross notional value of a sub-funds* aggregate month-end average of all (with no exclusions e.g. hedging/netting) OTC derivative positions for the last 12 months (the **Exemption Calculation**) will need to be below each of the following thresholds (originally set in 2013 for NFCs):

a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d)

*Note, ESMA has clarified in its EMIR Q&A document that:

i) assessment in respect of the thresholds should, in the case of umbrella funds, be at the level of the sub-fund; and
ii) where the derivative contract is concluded at the level of the sub-fund, the counterparty should be the sub-fund and not the umbrella fund. The sub-fund needs to have a LEI for reporting purposes and be identified as the counterparty. Otherwise, the umbrella fund should have a LEI for reporting purposes and be identified as the counterparty with the sub-fund identified as the beneficiary

As was the case in 2016 for the comparable calculations to qualify for Category 3 status, FCs now (and going forward, on annual basis) need to perform the Exemption Calculation by the date the exemption comes into effect in order to determine whether or not they can avail of the exemption, otherwise (i.e. if elect not to perform calculation) they will automatically be subject to the clearing obligation from that date. The exemption comes into effect on **17 June 2019**, slightly earlier than the effective date for clearing of 21 June 2019 in place prior to the publication of EMIR Refit.

In performing the Exemption Calculation, funds will likely be able to leverage off existing calculations performed pursuant to their governing regimes given the requirement to use gross notional values which is the basis for various other derivative-based calculations required to be undertaken pursuant to EU fund law requirements.

***What are the next steps following the Exemption Calculation?***

The Central Bank of Ireland (the Central Bank) has issued email correspondence which helpfully specifies the practical steps (see below) it expects a FC to undertake once it completes its Exemption Calculation or if it determines not to undertake the Exemption Calculation:

1) *Exemption Calculation exceeds one or more of the clearing thresholds*

Where the result of the Exemption Calculation exceeds the clearing thresholds for at least one class of derivatives the FC will become subject to the clearing obligation for all classes of OTC derivatives that are subject to the clearing obligation under EMIR.

The FC is required to immediately notify ESMA and the Central Bank that it is subject to clearing, and if the FC was not previously subject to the clearing obligation, they will need to commence clearing for the OTC derivative contracts entered into, or novated, from four months (**18 October 2019**) following that notification.
From that point on, the FC which takes positions in OTC derivative contracts and chooses to calculate its aggregate month-end average position is required to conduct that calculation every 12 months. A FC may at any time demonstrate that its position no longer exceeds the threshold and the clearing obligation will cease to apply.

2) *FC elects not to perform Exemption Calculation*

FCs who choose not to conduct the Exemption Calculation, must immediately notify ESMA and the Central Bank of this fact, and will consequently have to adhere to the clearing obligation. If the FC was not previously subject to the clearing obligation it will need to commence clearing for the OTC derivative contracts entered into, or novated, from four months following that notification.

3) *Exemption calculation does not exceed any of the clearing thresholds*

FCs who choose to conduct the calculation and do not exceed the clearing thresholds do not need to notify ESMA or the Central Bank. It would be reasonable to expect such FCs to record this calculation and to have evidence of the calculation available if requested by the Central Bank.

***Who should make the notification to ESMA and the Central Bank?***

The FC (i.e. the counterparty to the derivative) is the entity required to notify ESMA and the Central Bank under 1) or 2) above.

However, EMIR Refit provides that UCITS management companies and AIFMs which manage more than one fund must, in relation to the Exemption Calculation be able to demonstrate that "the calculation of positions at the fund level does not lead to: (a) a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; and (b) a circumvention of the clearing obligation. Accordingly, funds and fund managers both have a role in respect of the Exemption Calculation and notification to ESMA and the Central Bank.

***How do I notify ESMA and the Central Bank?***

Where a FC, following completion of the Exemption Calculation, is required to notify the Central Bank and ESMA that they have to adhere to the clearing obligation the following is the procedure to be followed:

- The following notification needs to be completed and submitted to the Central Bank and ESMA. For details on the notification procedure for ESMA please see link to ESMA website which includes details on the email address to be used (https://www.esma.europa.eu/files/refitnotification-clearingthreshold-fcsnfcsxlsx) for such notifications.
- The notification should be submitted to the Central Bank as a 'Regulatory Report' via the ONR System.
- If a FC wishes to notify the Central Bank that its position no longer exceeds the threshold it needs to submit the following notification to the Central Bank of Ireland and ESMA. Again, the submission to the Central Bank should be as a 'Regulatory Report' via the ONR System.
- Finally, please see a link to ESMA Q&As, and in particular OTC questions 2, 4, 20 and 25, which provide further guidance on the clearing obligation for counterparties.

# CENTRAL BANK FLAGS UPCOMING CP86 THEMATIC REVIEW

On 14 May 2019, during a candid speech to stakeholders in London, the Central Bank's Director of Asset Management and Investment Banking provided managers of Irish funds with some valuable insights into the Irish regulator's near-term priorities.

***CP 86/ Fund Management Company Effectiveness Themed Inspections***

Whilst engagement on CP86 compliance has been mooted by the Central Bank on a number of occasions, by far the most concrete details on the form of engagement were provided in this speech. The scope of the Central Bank's engagement will be "informed" by Brexit authorisation applications and feedback on those applications from the ESMA co-ordinated work with other European regulators. As such, we expect matters of substance and delegation to feature in the thematic review. In terms of process, "a questionnaire to fund management companies and self-managed investment companies" will be issued by the Central Bank (expected in September/October 2019) which will be "followed up with desk-based reviews [of the responses] and onsite inspections for selected firms".

***Brexit***

Along with a general update, the Director identified a number of ongoing Brexit related risks. One such risk was that "of UK firms seeking to continue to provide services to EU27 based clients on a 'reverse solicitation' basis". As well as noting ESMA's work to mitigate its effects, reverse solicitation was classed by the Director as an "[un]viable business model over the long term" and one under which "third country firms cannot offer services to new clients or new services to existing clients". Caution was also advised in the use of "secondments of former UK staff into Irish entities." as a Brexit solution for the distribution of funds. Referencing proposals received by the Central Bank, the Director warned that "if the secondment is structured simply as a device to circumvent the EU rules then we will have no appetite to approve such arrangements. Indeed, we have not approved a number of arrangements which we saw as legalistic, technical or indeed even artificial attempts to do just that.".

***Additional points of interest***

In addition to the above, other items of interest addressed in the speech (a link to which can be found here) included:

- the continuing regulatory focus on outsourcing,
- the upcoming application of the asset segregation regulations affecting the UCITS and AIF custody chain,
- the imminent publication of the long-awaited conclusion to CP119 on amendments to the Central Bank UCITS Regulations;
- progress on the authorisation and registration process for benchmark administrators under the Benchmark Regulations; and
- the Central Bank's approach to diversity.