




# Asset Management & Investment Funds Update

August 2022



## Key Dates & Deadlines: Q3 2022

Date	Source	Summary	Action/Impact
Q3 (exact date to be confirmed)		Revised ESMA MiFID Suitability Guidelines, updated to take account of sustainable preference rules, expected to be finalised.	In-scope fund managers to advance compliance preparations for MiFID sustainable preference rules effective 2 August 2022 (see below) absent final ESMA guidelines which are not expected to be published in advance of 2 August deadline. See <a href="#">here</a> for further details.
Q3 (exact date to be confirmed)		Central Bank thematic review on sustainable finance.	Following its SFDR/Taxonomy spot check review (the outcome of which has yet to issue), the Central Bank has confirmed its intention to carry out a thematic review which would precede the 2023/4 ESMA proposed CSA on sustainable finance and greenwashing.
Q3 (exact date to be confirmed)		Regulated firms with a PRISM rating of Medium Low or above (or its equivalent) will be required to submit to the Central Bank their outsourcing register using an online return which is expected to be published shortly.	Spreadsheet templates for outsourcing registers were scheduled to be published in Q2 2022 but, after a delay due to internal testing, the Central Bank has confirmed it expects to publish the templates and related guidance in the coming weeks for submission within 8 weeks of publication.

8 August		Corporate Sustainability Reporting Directive (CSRD) sustainability reporting standards consultation closed for comment.	'Large' and in-scope SME fund management companies to consider compliance preparations for CSRD reporting standards expected to be in place from January 2026, for y/e 2025. See <a href="#">here</a> and <a href="#">here</a> for further details.
1 September		Last phase of applicants (covered entities with an aggregate average notional amount of non-centrally cleared derivatives greater than €8 billion) subject to the initial margin requirements under EMIR.	This marks the end of the phase-in for initial margin requirements under EMIR. In-scope funds must exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million and a deminimis minimum transfer amount not to exceed €500,000. See <a href="#">here</a> for further details.
13 September		Deadline for beneficial owners of ICAVs, ILPs, CCFs and unit trusts to have PPSN or CBI reference number for submission to the Central Bank as Registrar of the Register of Beneficial Ownership of Certain Financial Vehicles.	Relevant fund vehicles to gather PPSNs and CBI reference numbers (issued as part of PCF approval process) for beneficial owners. For those beneficial owners without a PPSN/CBI reference number, a CBI verification of identity process has been put in place which will be available from 8 August 2022 and through which beneficial owners can be issued with a CBI reference number. See article on topic in this month's update for further details.
30 September		Third calculation date for the assessment of the principal adverse impacts of investment decisions under SFDR Article 4(1)(a), (3) or (4).	Implement processes and procedures for the collection of data necessary to calculate PAIs on each of the calculation dates during the first PAI reference period of January – December 2022 ahead of the publication of the first PAI statement by 30 June 2023. See <a href="#">here</a> for further details.

## Central Bank Update on Beneficial Ownership Verification Filings

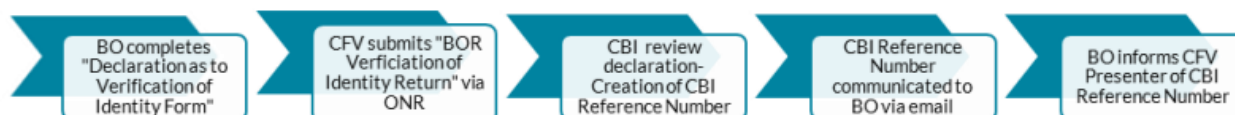
On 22 July 2022, the Central Bank (CBI) published notice of the upcoming process for ICAVs, ILPs, CCFs and unit trusts (certain financial vehicles or **CFVs**) to file beneficial owners' identity verification details to the CBI Central Register.

From 13 September 2022, all CFVs will be required to provide the CBI with beneficial owners' PPS numbers or, if a PPS number (**PPSN**) is not available, the beneficial owner's CBI reference number, issued as part of the PCF approval process with the CBI. The CBI will make available a revised Beneficial Ownership Return Form for submission of beneficial owners' identity numbers from 13 September and the CBI has committed to updating its guidance with details of the relevant process in advance of that date.

In the interim, CFVs must begin collating beneficial owners' PPSNs/CBI reference numbers in order to be ready to submit such details from 13 September 2022. CFVs should note that the legal requirement is for submission of a PPSN and so a CBI reference number may only be submitted where a beneficial owner has not been issued with a PPSN.

## Process for non-PCF beneficial owners with no PPSN

As set out in the CBI's recent notice, a verification of identity process will be available from 8 August 2022 for any CFV beneficial owners that have never been issued with a PPSN or a CBI reference number. The process involves the completion and submission of a Declaration as to Verification of Identity Form via the CBI's ONR, using a BOR Verification of Identity Return. This return will be made available to all CFVs via the ONR, in order for the required documentation to be returned securely to the CBI. On receipt and validation of the documentation provided, a CBI reference number will be communicated to the beneficial owner via the email address provided in the Declaration as to Verification of Identity Form. The CBI reference number will be required by the relevant CFV for filing the Beneficial Ownership Register of Certain Financial Vehicles after 13 September 2022. The beneficial owner must securely share this number with the relevant presenter in the CFV for filing purposes. The process is illustrated simply below.



The Declaration as to Verification of Identity Form is available on the Central Bank of Ireland website for download [here](#). The form should be completed by the beneficial owner, and witnessed by either a (i) Notary Public, (ii) Peace Commissioner, (iii) Commissioner for Oaths or (iv) person authorised to take and receive statutory declarations, where the declaration is being made within Ireland, and by a Notary Public only, where the declaration is being made outside Ireland.

CBI technical guidance on how to submit the BOR Verification of Identity Return on the ONR will be published shortly on the CBI's website. Where an individual is a beneficial owner for multiple entities, they are required to complete the Verification of Identity process only once and should communicate the CBI reference number they are assigned to the presenters of all CFVs of which they are a beneficial owner. For any individuals who cease being a beneficial owner prior to 13 September 2022, CFVs are encouraged to update the Central Register promptly in line with their obligation.

## Next Steps

All CFVs should commence collating beneficial owners' PPSNs/CBI reference numbers. For those beneficial owners for which no PPSN/CBI reference number is available, CFVs must engage with beneficial owners to ensure completion of the CBI verification of identity process. If the beneficial owner is a beneficial owner of multiple entities, the CFV should agree with the beneficial owner as to which CFV will submit the BOR Verification of Identity Return such that the beneficial owner can provide the CFV with the CBI reference number obtained using this process.

## Irish Whistleblowing Legislation Enacted

Further to our [July 2022 briefing](#), Ireland's transposition of the EU Whistleblowing Directive (the **Directive**) was completed on 21 July 2022 with the signing into law of the Protected Disclosures (Amendment) Act 2022 (the **Act**). As anticipated, regulated entities, including fund management companies and corporate funds, do not benefit from the Act's transitional arrangements in respect of the obligation to establish internal reporting channels for whistleblowers. Accordingly, fund management companies and corporate funds (PLCs and ICAVs) are subject to the provisions of the Act immediately. In preparation for the commencement of the Act, which is expected shortly, fund management companies and corporate funds should progress establishment of internal whistleblowing reporting procedures in line with the relevant provisions of the Act, a summary of which are set out in our July briefing (available [here](#)).

## Individual Accountability Bill Published

On 28 July 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (the **Bill**) was published. The Bill was preceded by, and largely reflects, a July 2021 Heads of Bill and a July 2018 Central Bank report into the behaviour and culture in the retail banking sector. As outlined in our previous briefings (available [here](#)), the purpose of the Bill is to empower the Central Bank to strengthen and enhance individual

accountability in regulated financial service providers (**RFSPs**), including fund management companies, investment companies and ICAVs through the allocation of responsibility and accountability for the management of the RFSP to individuals. As a result, the Bill is focussed primarily on ensuring the Central Bank has the necessary powers and legislative construct to allow for its implementation of an individual accountability framework (**IAF**), the detail of which, including the obligations to be imposed on RFSPs and individuals carrying out functions on their behalf, will be set out in the Central Bank consultation on the IAF, which is slated to follow very shortly after the enactment of the Bill. As the Bill must now pass through the Irish legislative process, commencing with its debate in mid-September following the summer recess, it may be some months before the specifics of the IAF are known.

## Proposed IAF

In line with the IAF proposed under the Heads of Bill and the Central Bank's 2018 report, the Bill provides additional detail on the four pillars of the IAF:

1. New Senior Executive Accountability Regime (**SEAR**) applicable initially only to banks, certain insurance firms and certain investment firms, requiring in-scope entities to allocate responsibility for different areas within the entity to particular individuals
2. New conduct standards providing greater clarity about the behaviour expected of all RFSPs and individuals working in RFSPs
3. More onerous requirements for RFSPs regarding the fitness and probity of persons exercising controlled functions (**CFs**) and pre-approval controlled functions (**PCFs**)
4. Streamlined enforcement process designed to break the "participation hurdle" so that the Central Bank will no longer be required to first prove a contravention of legislation against an RFSP before it can take enforcement action against an individual.

As fund management companies, investment companies and ICAVs will not be in scope of the first phase of SEAR, the following focusses on the impact of the Bill's publication on pillars 2, 3 and 4 above.

## 2. Conduct Standards

The Bill provides for the establishment of three levels of conduct standards: (i) business standards applicable to all RFSPs, regardless of sector; (ii) common conduct standards; and (iii) additional conduct standards.

**RFSP business standards:** all RFSPs, regardless of sector, must meet these standards which are intended to 'create an essential counterbalance' to the standards at (ii) and (iii). The business standards will seek to ensure that RFSPs act honestly, fairly, professionally, with due skill, care and diligence and in the best interests of customers and the integrity of the market. These shall include standards to ensure the RFSP does not mislead customers, maintains adequate financial resources, controls and manages sustainably, responsibly and in a sound and prudent manner, manages conflicts of interest, protects client assets, engages in good faith with the Central Bank and other NCAs/authorities performing similar functions, and makes adequate disclosures to the Central Bank. A breach of the RFSP business standards will be considered a prescribed contravention enforceable against the RFSP.

RFSP business standards and the necessary RFSP systems, controls, processes, policies and procedures will be set out in detail in Central Bank regulations which, as set out above, will be the subject of industry consultation following the enactment of the Bill.

**Common conduct standards:** all CFs (including PCFs) will be required to take reasonable steps to act honestly and with integrity, act with due skill care and diligence including acting appropriately in any decision-making (collective and individual), act in the best interest of customers including treating them fairly and professionally, be cooperative with the Central Bank and other NCAs/authorities performing similar functions, and observe proper standards of market conduct.

**Additional conduct standards:** PCFs and those in a position to exercise significant influence must take reasonable steps to ensure the RFSP is controlled effectively, complies with regulatory requirements, that any delegation of tasks by the PCF is to an appropriate person and is effectively overseen by the PCF, and ensure appropriate disclosures are made to the Central Bank.

### Central Bank guidance

The Central Bank will publish guidelines setting out how RFSPs must embed the conduct standards throughout their organisation, including as to the determination of 'reasonable' in the context of the obligation on individuals to take 'reasonable steps' to meet the standards, and practical guidance for those subject to the standards. The Bill also sets out certain safeguards for RFSPs to have in place so that staff are aware of what is expected of them including notification of applicable standards, training of relevant staff and reporting on disciplinary



action arising from breach of the standards. RFSPs will also be required to establish and maintain policies in respect of how the standards are implemented throughout the organisation. The Central Bank will publish guidelines relating to these obligations.

### 3. Fitness & Probity regime amendments

The Bill imposes more onerous obligations on RFSPs in relation to the fitness and probity (**F&P**) regime and introduces a number of enhancements to that regime, designed to ensure the effective operation of the IAF.

#### *New obligation of RFSPs to certify the fitness and probity of CFs*

In a formalisation and extension of the initial and continuing obligations for RFSPs under the current F&P regime, the Bill provides for RFSP certification of the fitness and probity of all CFs and revocation of that certificate if the RFSP is no longer satisfied that the CF is fit and proper. Currently, the Central Bank 'suggests' that RFSPs require CFs to notify any material changes to the initial due diligence carried out by the RFSP and 'recommends' that RFSPs carry out an annual CF audit, however the Bill's proposals would require RFSP certification to be on the basis of reasonable grounds for determining that the CF complies with the F&P standards and an ongoing obligation to maintain that due diligence to ensure revocation of the certificate if the RFSP considers the CF is no longer fit and proper. The Bill envisages that the Central Bank will issue regulations as to the form and content of the CF certificate, its period of validity, the RFSP procedures, systems and checks to be adopted and the form and content of the agreement with the CF to comply with the F&P standards.

#### *Central Bank investigation of former CFs/PCFs*

The Bill provides the Central Bank with the power to investigate CFs for six years after they have ceased performing that function subject to transitional arrangements to avoid any retrospective application of this power. The Bill also extends the maximum period of a Central Bank suspension of a CF by six months which period can be further extended by a maximum of 24 months by the courts. A suspension decision will be required to be confirmed by the courts and will be appealable to the Irish Financial Services Appeals Tribunal.

#### *Financial holding companies to fall within the F&P regime*

The Bill provides for the extension of the F&P regime to directors and staff of financial holding companies, mixed financial holding companies, insurance holding companies, and investment holding companies and to CFs of such holding companies established in Ireland.

### 4. Streamlined enforcement process

The Bill provides for removing the "*participation hurdle*" in current legislation which requires the Central Bank to first prove a contravention of legislation by a RFSP before it can take action against an individual. The Bill also provides for numerous other amendments to the administrative sanctions procedure (**ASP**) including those necessary to ensure it takes account of the required standards of fairness in the administration of justice, in light of a recent Supreme Court decision on topic.

#### *Extension of Central Bank enforcement process*

The Bill extends the scope of the Central Bank's powers of investigation and enforcement against individuals performing CF and PCF roles. The Bill also abolishes the concept of a "person concerned in the management" of a RFSP thereby removing the requirement for a "participation link", which requirement has been identified by the Central Bank as hindering it in holding individuals to account and promoting a culture of individual accountability. Also, the common conduct standards (which will apply to persons performing CF or PCF roles) and the additional conduct standards (which will apply to persons performing PCF roles) and the duty of responsibility under SEAR will each be directly enforceable against individuals, enabling the Central Bank to pursue individuals directly for their own misconduct.

The Bill makes changes to the procedures of Central Bank inquiries taking account of its additional powers to investigate and enforce against individuals, including changes to protect the confidentiality of material disclosed during inquiry proceedings and to ensure that investigations or inquiry proceedings are privileged.

### Next Steps

The Bill must now pass through the Irish legislative process, commencing with its debate in mid-September following the summer recess. Once the Bill is enacted, the Central Bank will publicly consult on the implementation of the IAF.

## IMF Recommends CBI Regulatory Actions

On 27 July 2022, the IMF published a range of regulatory policy recommendations to the Central Bank of Ireland (CBI) following its periodic financial stability review of Ireland under the Financial Sector Assessment Program (FSAP). The FSAP review of the Irish market-based finance sector (investment funds and SPEs), one of several financial sectors reviewed by the IMF, resulted in the issuance of 15 separate recommendations, 13 of which were issued either solely or jointly, along with Irish government departments, to the CBI. Several of the recommendations relate to planned regulatory actions of which industry will already be aware e.g., finalisation of the framework for the treatment of pricing errors and prioritisation of the new individual accountability framework (see separate article on topic). However, the recommendations are a useful resource for fund management companies seeking to gauge regulatory priorities and likely areas of CBI focus in the near to medium-term. A summary of the key recommendations of relevance to fund managers is set out below.

### *1. Liquidity management: CBI discussion paper on the horizon*

The IMF notes that, while a range of liquidity management tools (LMTs) are available to Irish funds, the CBI does not actively encourage funds to have a particular set of LMTs available to them at authorisation. The use of swing-pricing is positively referenced by the IMF as a tool which is used more widely in the UK and Luxembourg than in Ireland. The IMF recommends that the CBI progress publication of a "planned discussion paper on IF liquidity risk management" which should encourage more widespread adoption of LMTs, particularly swing pricing and anti-dilution levies. Increased CBI challenge of funds' use of LMTs at fund authorisation stage is also recommended. Liquidity risk management has been a regulatory focus for some time. ESMA co-ordinated a 2020 CSA on UCITS liquidity risk management and the CBI subsequently required UCITS managers to review fund liquidity risk management frameworks as against the CSA findings by end Q4 2021 (see [here](#) for further details). Liquidity risk was also cited as one of the CBI's key risk areas in focus for 2022 in its Securities Markets Risk Outlook Report published in February 2022 (see [here](#) for further details).

### *2. ETFs: AP concentration risk merits supervisory engagement*

The IMF notes the CBI's identification of concentration risk in the AP market with two of the most active APs being responsible for up to 90% of AP activity for certain ETFs of the dominant ETF provider in the Irish market which manages ETFs totalling 61% of AUM. While the IMF acknowledges the lack of evidence of market makers stepping away from market during the pandemic-related volatility in 2020, it recommends that the relevant CBI supervision teams engage with ETF providers "to ensure their arrangements with APs and MMs are robust and promote the smooth functioning of the sector, including in times of market stress." It also recommends closer co-operation between the CBI supervisors of funds and those supervising APs and MMs.

### *3. Leverage: increased UCITS leverage reporting necessary*

The IMF recommends increasing the level of UCITS leverage reporting as while the reduced leverage reporting obligations on UCITS managers by comparison to those applicable to AIFMs may be partly explained by the more restrictive UCITS leverage rules, UCITS using VaR can employ significant levels of leverage. The IMF recommends that the CBI not wait for EU-driven amendments to the UCITS regulatory reporting regime, which are envisaged as part of the Commission's AIFMD review (see [here](#) for further details), noting that it would be "preferable for the Central Bank to take the initiative" to ensure it has a "more comprehensive and up-to-date picture of leverage within the UCITS sector."

### *4. Delegation: extensive and systematic data collection warranted*

The IMF considers the extent of delegation by Irish fund management companies merits extensive and systematic data collections to facilitate both ongoing supervision and the CBI's understanding of the impact of "any tightening of requirements on delegation arising from the AIFMD review, in particular in respect of non-EU delegation." While the AIFMD review proposals provide for increased delegation reporting by both UCITS managers and AIFMs, the IMF recommends that the CBI consider introducing national measures if revised EU rules fail to close the data gap on Irish fund managers' delegation arrangements.

The IMF also recommends expanding data collection on investment funds' credit lines to give a clearer picture of how Irish funds would cope with unusually high levels of redemptions and/or unexpected portfolio illiquidity.

### *5. CP86: follow-up on 2020 'Dear CEO' letters a must*

The IMF notes the CBI's acknowledgement of the disparity in CP86 compliance standards of fund managers which relocated to Ireland as a result of Brexit and those established prior to the publication of CP86. The IMF

recommends the CBI continue its efforts to bring all fund managers to the same level, including through follow-up on the CP86 thematic review findings (see [here](#) for further details).

*6. UCITS eligible assets: increased convergence on approaches to bank loans, delta-one securities, and digital assets*

The IMF recommends that the CBI continue its work at ESMA in seeking to address remaining areas of divergence across Member States in the application of the rules on eligible assets, in particular with a view to developing common approaches to bank loans, delta-one securities and digital assets.

*7. MMF reform: CBI should take an active role in promoting IMF-recommended reforms*

MMF reforms recommended by the IMF to strengthen the resilience in the MMF sector include decoupling gates and fees from liquidity thresholds, increasing minimum liquidity thresholds, enhancing the quality and diversification of liquid assets, enhancing regulatory reporting and stress testing, mandating at least one LMT, imposing a minimum-balance-at-risk requirement, facilitating redemption-in-kind for institutional investors, and introducing industry-wide gates triggered by supervisory intervention or pre-defined criteria. The Commission's scheduled review of the MMFR was due for publication last month (see [here](#) for further details).

*8. Fund terminations: gaps in legislative framework should be filled*

The IMF recommends legislative amendments to address the long-outstanding issue of funds which cannot liquidate due to outstanding monies being held for uncontactable shareholders.

*9. PRISM: review of supervisory impact model for funds almost complete*

Funds are currently categorised as low impact under the CBI's risk-based supervisory model (**PRISM**). A CBI review of PRISM, including its impact rating model for funds, has been ongoing since 2020. The review is now at an advanced stage and a "proto-model has been developed to better capture the actual impact of the failure of a fund or group of funds (capturing the various dimensions of related risk) and to potentially utilize the model as a driver of supervisory engagement."

## Next Steps

Progress on the IMF's recommendations to the CBI will form part of the next periodic FSAP of Ireland.

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## SFDR Level 2 Decision Tree

On 25 July 2022, SFDR Level 2 was published in the EU Official Journal with no change to the previously indicated effective date of 1 January 2023. There are also no material amendments to the Level 2 measures adopted by the Commission in April this year (see [here](#) for further details) which means that the final Level 2 measures materially reflect the ESA RTS adopted in February and October 2021. In addition, ESMA has published word versions of the disclosure templates at Annex 1-5 of SFDR Level 2 which are accessible [here](#) on its website.

### Decision tree

SFDR Level 2 sets out detailed and prescriptive disclosure obligations in respect of:

1. fund managers' consideration of the principal adverse impacts (**PAIs**) of investment decisions on sustainability factors; and
2. funds with environmental or social (**E/S**) characteristics in scope of SFDR Article 8 and funds targeting sustainable investments in scope of SFDR Article 9.

The decision tree below may be used by fund managers in determining whether they are, based on their SFDR (**L1**) compliance approach, in scope of Level 2 (**L2**) disclosure rules and if so, the relevant disclosure rules to which they will be subject from 1 January 2023 (other than where indicated). Note, L1 rules came into effect on 10 March 2021 other than those in respect of financial report disclosures for funds in scope of Articles 8 or 9, which came into effect on 1 January 2022, and fund-level PAI disclosures, which come into effect on 30 December 2022.





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