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Asset Management & Investment Funds Update

March 2024

Key Dates & Deadlines: Q2 2024

The following are key dates and deadlines in Q2 2024 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
End Q1/early Q2 (exact date TBC)		AIFMD/UCITS Review Final AIFMD/UCITS amendments expected to issue on a range of topics including delegation and substance, liquidity management and loan-originating AIFs, following adoption by Council and Parliament on 26 and 7 February 2024 respectively.	Fund managers may prepare for an application date of Q1 2026 assuming retention of the proposed two-year transposition period. See here for further details.
End Q1/early Q2 (exact date TBC)		ESG Ratings Regulation Council and Parliament reached provisional agreement in February 2024 and the published final compromise is expected to be adopted with an application date in H1 2025.	The ESG Ratings Regulation will provide for the authorisation and supervision of EU and non-EU entities which publicly disclose or distribute ESG ratings. See article on topic in this month's update for further details.
March (exact date TBC)		BMR REFIT proposals Proposals to limit the application of the BMR to significant and climate benchmarks and preclude non-EU administrators from using PAB/CTB labels are planned for adoption by end-March 2024.	Both administrators and users of benchmarks are expected to benefit from the REFIT proposals. See here for further details.

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20 March		Retail Investment Strategy ECON to vote on the Commission's proposal, following which the proposal will move to trilogue negotiations before being voted on by the Parliament and Council and moving to adoption.	The proposal is scheduled for implementation with a start-up period of 2025-2027 followed by full-scale operation. See here for further details.
Q2 (exact date TBC)		ESMA Funds' Names Guidelines Guidelines on the use of ESG terms in the names of funds are expected to be finalised and published with an application date of 3 months post-publication and a 6-month transition period for existing fund names.	Guidelines are expected to include qualitative and quantitative investment thresholds for funds' use of ESG terms in the fund name. See here for further details.
Q2 (exact date TBC)		SFDR Level 1 Revisions Commission expects to adopt SFDR proposals taking account of feedback from Q4 2023 industry consultation on compliance issues, alignment with other sustainable finance measures and reform proposals.	See here for further details.
29 April		EMIR REFIT reporting rules Delegated measures for reporting under EMIR Refit and associated ESMA Guidelines applicable.	Key changes to TR reporting and regulatory notification of errors include increase in reportable fields, new reporting format, new rules for UTI generation, phased expansion of reconcilable fields and clarifications of the regulatory notification requirements for reporting errors.
28 May		T+1 Settlement US transitions to T+1 settlement cycle one day after Canada, which transitions on 27 May 2024.	See here for further details.
31 May		FCA Anti-Greenwashing Rule FCA's anti-greenwashing rules and associated guidance under the UK Sustainability Disclosure Requirements (**SDR**) come into effect.	See here for further details.
30 June		FCA ESG Rules/TCFD First entity-level and (if applicable) public product-level disclosures due for firms with £5-50bn AUM under the UK SDR.	See here for further details.
End-Q2		CSA Asset Valuation Deadline for completion of review of asset valuation frameworks by fund managers, as required by the Central Bank in its 'Dear Chair' letter detailing findings from the CSA on Asset Valuation.	The Central Bank expects fund managers to evaluate the adequacy of their asset valuation control frameworks, take any necessary steps to strengthen arrangements where weaknesses are identified following a review of the Central Bank's CSA findings published on 14 December 2023. See here for further details.

ESG Ratings Regulation: Progress and SFDR Revisions

Following publication of a proposal to regulate ESG ratings providers last summer, EU legislators have moved swiftly to provisionally agree the text of an EU ESG Ratings Regulation which is expected to be adopted and enter into force in the coming weeks with an 18-month transition period.

At its core, the ESG Ratings Regulation targets better comparability and increased reliability of ESG ratings used in the EU. To achieve this, it sets down authorisation/third-country access, governance, organisational and transparency rules for ESG ratings providers operating in the EU. The following considers the entities and products in scope of these rules as well as entities which are not in scope but still impacted by the ESG Ratings Regulation.

Entity Scope

The ESG Ratings Regulation applies to ESG ratings providers operating in the EU which includes:

1. EU-established providers if they publish (on a website or through other means) or issue/distribute (through subscription or other contractual means) their ESG ratings to EU regulated entities, companies/groups in scope of the EU Accounting Directive and those listed on EU regulated markets.
2. Providers established outside the EU which issue or distribute ESG ratings to the above entities.

In-scope ESG ratings providers are subject to authorisation (in the case of EU-established providers) or equivalence, recognition or endorsement (in the case of third-country providers) and the range of organisational, governance and transparency rules under the ESG Ratings Regulation.

Product Scope

ESG ratings/products in scope of the ESG Ratings Regulation are ESG-related opinions and/or scores based on an established methodology and a defined ranking system which are published, issued or distributed to third parties on a non-exclusive basis.

The following are not considered ESG ratings in scope of the ESG Ratings Regulation:

- ESG data and data products which do not include an ESG rating.
- Products/services that incorporate an element of an ESG rating e.g., investment research.
- ESG ratings issued by EU regulated entities (including UCITS managers, AIFMs, SFDR financial market participants) and incorporated in their EU regulated product or service offering (including UCITS, AIFs and SFDR financial products), provided the entity complies with the public transparency rules under the ESG Ratings Regulation (see SFDR Revisions section below for further details).
- Private ESG ratings not intended for publication/distribution including those issued by EU regulated entities and used exclusively for internal purposes or for providing in-house or intra group financial services or products.
- ESG ratings produced by an EU authorised rating provider which are published/distributed by a third party.

SFDR Revisions

EU regulated entities which issue and incorporate ESG ratings in product marketing materials are exempt from the ESG Ratings Regulation provided these entities make website disclosures equivalent to the public disclosures required of ESG ratings providers under the ESG Ratings Regulation.

While the above provision applies broadly to EU regulated entities, the ESG Ratings Regulation specifically amends SFDR to ensure that investors in SFDR financial products benefit from an equivalent level of transparency on ESG ratings disclosed in products' marketing materials.

SFDR is amended (by the inclusion of a new Article 13(3)) to require in-scope entities which disclose an ESG rating in product marketing materials to publish on their website the same disclosures which are required to be made public by ESG ratings providers under the ESG Ratings Regulation. Such public disclosures are set out in Annex III 'minimum disclosures to the public' and include information on the methodologies, models and key rating assumptions used. The ESAs are charged with developing regulatory technical standards specifying website disclosures required under the new SFDR Article 13(3).

Next Steps

ESG ratings providers operating in the EU will have four (or 22, in the case of 'small' providers) months, from when the ESG Ratings Regulation enters into force, to apply for authorisation by ESMA. The ESG Ratings

Regulation is expected to be adopted and enter into force in the coming weeks and will apply 18 months after it enters into force.

Central Bank Financial Regulatory and Supervisory Outlook 2024

On 29 February 2024, the Central Bank published the first edition of a new annual report, the Regulatory & Supervisory Outlook 2024 (the **Report**), detailing its views on the key trends and risks facing the financial sector and the consequential regulatory and supervisory priorities.

In the Report, the Central Bank takes into consideration the global environment and risk landscape in which the financial sector is operating and groups risks facing the financial system into (i) macroeconomic and geopolitical environment risks; (ii) regulated entities' operational risks; and (iii) longer term structural forces risks.

The Central Bank's financial regulation and supervision priorities for 2024 are shaped by these risks - including six overarching supervisory priorities, complemented by more detailed supervisory strategies for each of the financial sectors within the Central Bank's remit, providing firms with detail on the Central Bank's expectations of their sector, as well as what their sector can expect in terms of focused supervisory work.

Funds & fund management companies

Risk area 1: ***Leverage and liquidity***
In the Report, the Central Bank repeats its financial stability concerns arising from funds' (mis)management of leverage, liquidity, pricing and fund entry-exit mechanisms and cities rapid deleveraging, increased market volatility and liquidity mismatch as key risk factors.

Relevant action items for fund managers:

- By May 2024, open-ended funds authorised on or before 24 November 2022 which invest 50% or more directly or indirectly in Irish property assets must comply with the leverage and liquidity requirements of the Central Bank's macroprudential framework for property funds (see here for further details).
- By 30 June 2004, fund managers must have completed the mandated review of fund valuation frameworks following publication of ESMA and Central Bank findings from the 2022 CSA on valuation. The review is expected to evaluate the adequacy of asset valuation control frameworks against the CSA findings and the Central Bank expects steps are taken to strengthen arrangements where weaknesses are identified (see here for further details).

Risk area 2: ***Market integrity***
Risks cited in the Report include those arising from trading with high order to cancellation rates, the growth in trading platforms, dissemination on social media of unverified information, and inadequate surveillance allowing suspicious activity to go undetected.

Relevant action items for fund managers:
The Central Bank expects firms to be aware of their obligations under the Market Abuse Regulation and to ensure frameworks for the identification, assessment and reporting of suspected instances of market abuse are sufficiently robust to identify, manage and mitigate emerging risks in what is a rapidly changing market environment.

Risk area 3: ***Conflicts of interest***
The Report cites the conflicts of interest arising from related party transactions of funds, calling out in particular those with depositaries which can provide a number of services to funds including cash monitoring and safe-keeping of assets.

Relevant action items for fund managers:
The Central Bank notes that deficiencies have recently been observed in how relationships between related parties are managed and expects robust governance, control and surveillance frameworks are in place to mitigate risks. Firms should take note of the Central Bank's priorities in this space which include participating in the upcoming ESMA Depositary Peer Review.

Risk area 4: ***Delegation and outsourcing***

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Risks include those arising from inadequate oversight of delegates, particularly by 'white label' fund managers of their business partners which act as investment managers.

Relevant action items for fund managers:
The Central Bank expects fund managers to increase resources and expertise commensurate with any increase in the nature, scale and complexity of operations. Intra group outsourcing and delegation must be subject to robust governance and oversight, particularly in respect of market abuse surveillance activities. Third party outsourcing of cybersecurity and digital business processes should be monitored for concentration risk, particularly in the current global landscape.

Risk area 5: ***Sustainable finance***
Risks include greenwashing, green bleaching, and a lack of transparency on data limitations. In the case of green bleaching, the Central Bank specifically notes the practice of classifying funds as subject to Article 8 to avoid risking non-compliance with Article 9 SFDR, which it is concerned can result in inaccurate investor disclosures.

Relevant action items for fund managers:
Firms must ensure investors are fully informed, and in no way misled, regarding the stated sustainability credentials of financial products. Firms should take note of the Central Bank's priorities in this space which include work on the ESMA CSA on sustainability and implementation and operationalisation of the EU Green Bond regime.

Risk area 6: ***Data quality***
The Central Bank has an ongoing concern as to the quality of the data sets reported to it, which it notes can be suggestive of poor governance and investors potentially receiving inaccurate information about financial products.

Relevant action items for fund managers:
Firms must oversee the accuracy and quality of data in regulatory submissions and proactively identify and resolve errors in those data sets.

Risk area 7: ***Cybersecurity***
Risks of cyber-attacks are rising due the proliferation of interconnected IT systems, acceleration of Fintech, greater home/hybrid work patters and geopolitical tensions.

Relevant action items for fund managers:
Firms must have in place robust operational risk management and resilience frameworks which provide for adequate IT governance and IT risk controls including data management and security.

Risk area 8: ***AI and Fintech***
Risks include those arising from inadequate governance of the use of AI and those associated with its use, including as a result of malfunctions and the narrow focus of AI in perfecting particular tasks.

Relevant action items for fund managers:
Firms should monitor developments with respect to the forthcoming AI Act and take note of the Central Bank's priorities in this area which include further developing its 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.

Risk area 9: ***External risk environment***
Risks to firms' resilience are in focus due the impact of higher interests and inflation and systemic impacts from failing international firms.

Relevant action items for fund managers:
Firms must mitigate key exposures from external environments including through severe but plausible stress testing and performance analysis.

Next Steps

In a Dear CEO letter to firms dated 29 February 2024, the Central Bank drew attention to the Report and highlighted its aim of providing Boards and senior leadership teams with an understanding of the Central

Bank's view of the risk landscape, its regulatory expectations, as well as what can be expected in terms of the Central Bank's focused supervisory work for the coming period.

IFSAT Critical of the Central Bank's Decision on PCF Roles

On 14 February 2024, the Irish Financial Services Appeals Tribunal (**IFSAT**) published its decision on an appeal related to the Central Bank of Ireland's (**Central Bank**) fitness and probity (**F&P**) approval process.

The appeal concerned a decision by the Central Bank on 5 December 2022 to refuse an individual's application to two senior roles (pre-approval controlled functions (**PCFs**)) in a regulated financial services firm under the Central Bank's F&P regime. The PCF roles in question were those of non-executive director (**NED**) and Chairman of a regulated investment fund.

IFSAT found that the Central Bank's decision was incorrect in law. Critically, IFSAT also highlighted several concerns with how the Central Bank handled the PCF applications. The tribunal returned the applications to the Central Bank for reassessment because the original PCF assessment process breached "*constitutional and natural justice*" requirements.

The statutory F&P regime, which was introduced by the Central Bank Reform Act 2010 (**2010 Act**), is a key part of the Central Bank's gatekeeping role, the core function of which is to ensure that individuals in key decision-making and customer-facing positions within a regulated firm are competent, capable, honest, ethical, of integrity and financially sound.

In light of the decision, the Central Bank has commissioned an independent review of the F&P approval regime for individuals seeking to hold PCF functions.

From 31 January 2024, the date of the order, the Central Bank will have 21 days to notify the applicant of the procedures that will apply to its reconsideration of the applications and 90 days to reassess the applications.

Background to the case

Under the 2010 Act, a regulated firm must obtain prior written approval from the Central Bank before the firm can appoint an individual to a PCF role.

In June 2021, when the applicant in question (**applicant**) applied for the two new PCF roles (**2021 applications**), he had already been approved by the Central Bank to act as NED or Chairman of seventeen regulated financial service provider firms in Ireland.

At that time, the applicant was the Chairman and NED of a Central Bank regulated firm which had been appointed as management company of a Central Bank regulated alternative investment fund (**AIF**), of which he was also Chairman and NED. The management company received investment advice from a Swiss entity and then, subject to consideration, would make investments on behalf of the AIF. Some of the investments made on behalf of the AIF were in bonds which became impaired in value, resulting in losses to investors. The Central Bank was notified of this in late 2019 and subsequently launched an investigation. As a result, the management company had to submit a business plan to the Central Bank to remedy deficiencies in its due diligence, oversight and monitoring in relation to the AIF.

For context, it is worth noting that in 2020, applications for certain PCF roles in respect of the same individual were made to the Central Bank (**2020 applications**). The Central Bank did not engage or issue a decision in relation to the 2020 applications, and they were ultimately withdrawn.

The Central Bank's F&P assessment of the applicant in respect of the 2021 applications and the subsequent IFSAT appeal related only to the question of the individual's fitness (concerning qualifications, knowledge, skills and experience) and not to that of probity.

Fitness and probity assessment process

The process regarding controlled function role assessment consists of the following stages:

1. Individual Questionnaire (**IQ**) submission

   The IQ is a detailed document which the individual applying for a PCF role must complete online. The proposing firm must endorse the IQ before submitting it electronically to the Central Bank for assessment.

2. Documents
   Following examination of the IQ the Central Bank may request further documents relevant to the assessment.

3. Interviews
   If the Central Bank has further questions, the applicant may be called to attend an "*assessment interview*" and, following this, possibly a second interview, known as a "*specific interview*" (it should be noted that many PCF applications proceed without any interview).
4. Decision
   Unless an application is withdrawn, the Central Bank will either approve the appointment or issue a "*minded to refuse*" letter. A minded to refuse letter is intended to inform a firm and the individual concerned of the Central Bank's preliminary opinion that the individual is not suitable for PCF role approval. An official in Central Bank (who is not involved in the original decision-making process) (**ultimate decision-maker**) will then consider any submissions in response.

Key Issues highlighted by the IFSAT decision

IFSAT found that the Central Bank's procedures at the interview and decision stages of the 2021 applications process were flawed. The Constitutional principles of natural justice require fair notice, the duty to give reasons and adherence to the principle of *audi alterem partem* (to hear the other side). IFSAT was satisfied that these requirements were breached, whether considered separately or together.

The Central Bank interviews

IFSAT distinguished between F&P applications and regulatory investigations. It made the point that if the Central Bank were investigating an individual, that individual would have access to certain procedural rights set out in case law such as:

- the right to fair notice of the issues to be covered or the allegations made;
- notice of the evidence to be relied on;
- the right of examination and cross-examination of accusers;
- the right to legal representation; and
- the right to an independent decision-maker, free from bias or prior involvement.

Although applicants for PCF roles under the F&P regime do not benefit from the same range of rights as they would if they were the subject of a regulatory investigation, IFSAT noted that they are still entitled to fair procedures including notice of the issues to be covered at interview and interviewers who consider relevant matters fairly and impartially.

In the context of the online assessment interview, the applicant was given prior notice of a list of general matters to be covered, however, the interviewer, off camera, questioned him at length about specific matters beyond the scope of that list and with an emphasis on matters related to the AIF. For example, the applicant knew he would be examined on his knowledge of the regulatory environment; however, some questions were "*unnecessarily granular and sometimes unclear*" and the issues recorded in the formal minutes of the interview did not reflect the list of general matters on which prior notice had been given. Other questions were found by IFSAT to be "*extraordinarily compl*ex *with many sub-clauses*" and some of the interviewers appeared to be confused about the nature of the bonds that the fund was proposing to trade.

There was a similar lack of fair procedure in the context of the specific interview when the applicant was given an invitation which was "*broad and unspecific in its terms*" and was also sent a large pack of information the afternoon before the interview, which was not copied to his solicitor. The applicant was questioned extensively on this information and did not have the opportunity to consider or refer to the information before or during the interview. Many of the flaws evident in the initial interview were mirrored in the specific interview.

Minded to refuse letter

The applicant's qualifications and experience (including endorsements) were not fully reflected in the Central Bank's minded to refuse letter which contained the Central Bank's preliminary opinion as to his fitness for the PCF roles following both interviews notwithstanding that the individual had extensive experience in these roles and in the funds industry.

The decision of the ultimate decision-maker

A Central Bank official who was the ultimate decision maker and not involved in the original decision-making process was appointed to consider the preliminary opinion and the submissions received to determine the matter. This official relied heavily on the information from the applicant's interviews which followed an already flawed process and failed to hear the other side. The official also focused on the applicant's regulatory and legal knowledge and failed to engage with or take due account of his very detailed rebuttal evidence or set out the reasons for their decision.

Standard of fitness

The Central Bank did not make out the standard of fitness to be met by the applicant in this case. Many practitioners in the industry may feel that this is reflective of the wider F&P application regime, where the standard required could be clearer.

Right to a livelihood

The IFSAT decision pointed out that what was at issue here was more than simply the right to the applicant's good name. Rather, what was in question was a binding decision on his right or interest to earn a living. It appeared that the applicant would never be able to obtain PCF approval from the Central Bank following the investigation of the AIF. In the context of the funds industry, the applicant's reputation and standing with the Central Bank and the ability of a fund to comply with launch deadlines are important.

Potential consequences of the IFSAT decision

Persons applying for PCF roles in the future and their advisors will be minded to study this decision closely. It underscores several potential avenues to support a legitimate challenge to a PCF application refusal and will likely mean that procedural steps in the F&P process will in future be brought into sharper focus. Matters of particular focus may include whether:

- adequate prior notice of issues to be raised at the interview is provided;
- agenda items for the interview are clearly set out in advance;
- adequate time is provided for the applicant's review of the agenda and other relevant documentation and for taking advice;
- the substance and form of questioning at interviews is fair (e.g. notified in advance, flowing naturally from the agenda and clear rather than complex or difficult to follow);
- supporting materials submitted in support of a PCF application are given due consideration so that the decision does not disproportionately hinge on performance at interview;
- timely consideration of applications and responses is given;
- if a legal advisor is on record for the applicant, they receive copies of relevant information;
- unusual practices (e.g. questioning off-camera) are avoided;
- assessment interviews are recorded or at least a note-taker for the applicant is permitted;
- previous appointments to PCF roles are appropriately taken into consideration.

Conclusion

IFSAT recognised that the Central Bank has a fundamentally important role as a regulator and noted that even though its concerns about the AIF may have been justifiable.

IAF Fitness & Probity Reforms

The Central Bank Individual Accountability Framework (**IAF**), which (except for the Senior Executive Accountability Regime (**SEAR**)) came into effect on 29 December 2023, has reformed the Central Bank Fitness and Probity (**F&P**) regime.

Except for the SEAR regulations, which are not yet signed, the IAF regulations and related documents have been published on a piecemeal basis between December 2023 and January 2024. The following is an overview of the new IAF regulations and Central Bank documentation.

PCF Regulations

The PCF Regulations were signed on 20 December 2023, effective 29 December 2023. These Regulations amend the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 and provide for the following changes:

Materiality threshold introduced for Branch Managers

Amended PCF-16 'Branch Manager of branches established outside the State' such that it 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.

New PCF roles

Introduced new PCF roles:

- PCF-54 Head of Material Business Lines for Insurance Undertakings;
- PCF-55 Head of Material Business Lines for Investment Firms; and
- PCF-53 Head of Client Asset Oversight for Credit Institutions.

Holding Company Regulations

Section 9 of the Central Bank (Individual Accountability Framework) Act 2023 (**IAF Act**) amends Section 20 of the 2010 Act to extend the F&P regime to holding companies established in Ireland and to provide the Central Bank with a regulation-making power to prescribe CFs and PCFs of these holding companies. The Holding Company Regulations were signed on 20 December 2023, effective 29 December 2023. The Holding Company Regulations extend the F&P regime for the first time to holding companies established in Ireland and allow the Central Bank to prescribe CFs and PCFs in relation to these holding companies. The Holding Company Regulations prescribe new PCF roles to the Chairperson (HCPCF-1) and a Director (HCPCF-2) of a holding company and CF roles to the holding company equivalent of CF-1 (HCCF-1) and CF-2 (HCCF-2) roles in a regulated firm.

Certification Regulations

The Certification Regulations were signed and became effective on 8 January 2024. The Certification Regulations set out the F&P certification requirements for regulated firms and holding companies.

The Certification Regulations apply to all regulated firms and holding companies to which Part 3 of 2010 Act applies.

Key changes in relation to the new certification requirements are:

(a) *Certification obligation extended to CFs under the IAF regime*

The IAF Act amended and replaced section 21 of the 2010 Act to provide that a regulated firm must not permit a person to perform a CF in relation to it unless a certificate of compliance with standards of fitness and probity, given by the regulated firm in accordance with section 21, is in force in relation to the person.

Under IAF Act, the Central Bank can make regulations prescribing the form and content of the certificate, the period of validity of the certificate and the adoption of related procedures, systems and checks by the regulated firm.

(b) *Certification submission*

- **Compliance certificate to be issued before appointment** – A regulated firm or holding company must issue the certificate of compliance referred to above in respect of each CF performed by the person before such person is appointed to the CF role.
- **Compliance certificate requirements** – Such firm must state its satisfaction that the person complied with any F&P standard in the certificate of compliance.
- **New entrant to the F&P regime** – Where any entity becomes a regulated firm or holding company and the above conditions are met, the firm (within five days) must issue a certificate of compliance in respect of each CF.
- **Person performing multiple CF roles** – Where an individual performs multiple CFs, these should each be addressed in the F&P certificate for that individual and updated accordingly.
- **Period of validity** – Certificates of compliance will be valid for 12 months from the date of issue.

(c) *Record keeping*

- Regulated firms and holding companies must maintain a record of:
  - the CF performed by each person;
  - aspects of the affairs of the firm in which such person will be involved;
  - the basis for the firm's satisfaction that such CF meets the F&P Standards; and
  - any outsourcing arrangement where the outsourcing arrangement involves the performance of a CF and the outsourced service provider is a person who is not a regulated firm or a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995.
- All information and documentation relied on to issue a certificate of compliance must be kept for a minimum of six years after that person has ceased to perform a CF role in the firm.

(d) *Filing*

- The initial confirmation of compliance with the Certification Regulations must be filed by 1 January 2025 (in respect of the 2024 calendar year). In scope regulated firms and holding companies must file confirmation of compliance on an annual basis after this date and notify the Central Bank of a revocation or non-renewal decision about a certificate of compliance.

Central Bank F&P Standards and Guidance

In December 2023, the Central Bank published revised F&P Standards and related Guidance to take account of changes to the F&P regime introduced by the IAF.

F&P Standards

The revised F&P Standards now include holding companies and also amend Section 4 (conduct to be honest, ethical and requirement to act with integrity) to include queries on the following:

- a person's suspension in a role;
- being prosecuted for (not just convicted of) an AML/CTF offence;
- proceedings being issued (not just a civil finding) in relation to fraud, misrepresentation, dishonesty or breach of trust;
- provision of untruthful, false or misleading information to regulatory authorities (not just to the Central Bank);
- being subject to remuneration clawbacks as a result of alleged wrongdoing;
- being subject to disciplinary proceedings by an employer/regulated financial service provider/holding company;
- being convicted of a criminal offence or subject to criminal investigations and proceedings or the subject of criminal proceedings or civil proceedings;
- being subject to pending criminal proceedings or managing an organisation subject to pending criminal proceedings.

These amendments to Section 4 are also reflected in the revised F&P Individual Questionnaire which was introduced in mid-2023.

F&P Guidance

Key changes to the F&P Guidance include the addition of a new Part C regarding CFs, the CF certification process and due diligence requirements. The Guidance provides further information on the Central Bank's expectations and requirements concerning:

- the certification process;
- the identification of CFs;
- forming a view that a person is fit and proper;
- required frequency of completing the certification process in respect of all CFs;
- confirmation of agreement to comply with the F&P Standards;
- the submission of data for certification to the Central Bank;
- the retention of data concerning certification; and
- due diligence underlying the certification process.

On 17 January 2024, the Central Bank updated its F&P In-Situ Submission Guidance. This document guides regulated firms and holding companies on submitting PCF in-situ information through the Central Bank's Portal.

€1,225,000 Central Bank Fine for Breach of Market Abuse Regulation

On 27 February 2024, the Central Bank fined Goodbody Stockbrokers €1,225,000 for its failure, over a five-and-a-half-year period, to have an effective trade surveillance framework to monitor, detect and report suspicious orders and transactions in relation to market abuse, in accordance with the Market Abuse Regulation (**MAR**). The fine represented a 30% reduction by way of settlement discount.

Background

During its 2020 Market Abuse Thematic Review, the Central Bank identified multiple suspected deficiencies in Goodbody's compliance with its MAR obligation to have an effective trade surveillance framework and report suspicions of market abuse to the Central Bank.

Following the identification of such deficiencies, the Central Bank requested and received a remediation plan from Goodbody, which it notes was subsequently confirmed as having been implemented.

In January 2022, the Central Bank commenced an investigation of Goodbody which confirmed the following failings:

- Failure to identify business model-specific market abuse risks as a result of an inadequate, informal or documented approach to such identification.
- Gaps in control environment for market abuse monitoring including through a failure to calibrate the alert parameters and thresholds appropriately within its automated trade surveillance system, a failure to apply control testing to ensure the design and operational effectiveness of its trade surveillance and a failure to manually monitor market abuse risks which fell outside of the trade surveillance system.
- Governance failings including a failure to ensure a 'four-eye' approval process for parameter changes on its automated trade surveillance system, failing to document governance structures for automated and manual monitoring of market abuse behaviour and failing to provide MI on trade surveillance to senior management.
- Failing to ensure a clear boundary between the three lines of defence for the detection and reporting of suspicious orders and transactions.

Fine

In determining the level of the fine, the Central Bank had regard to the seriousness of MAR breaches and their consequences, the lengthy duration of the breach (5.5 years), that Goodbody admitted the breach and was not previously the subject of an enforcement action, and the need to impose an effective and dissuasive penalty. The Central Bank's publication on the fine is accessible here.

WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com

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