WILLIAM FRY

Asset Management & Investment Funds Update

April 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
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.
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.
April (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 were planned for adoption by end-March 2024 so are expected shortly.	Both administrators and users of benchmarks are expected to benefit from the REFIT proposals. See here for further details.

WF-72801944-v1

April (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.
16 April		AIFMD II enters into force AIFMD amending Directive is required to be transposed by 16 April 2026 with transposing measure applied from that date.	Please see article on topic in this month's update 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.
Late April/ Early May		Central Bank thematic questionnaire on liquidity management tools ("LMTs") A quantitative-based Central Bank questionnaire will issue for all sub-funds, including MMFs and ETFs focussing on how LMTs are used, by whom and when.	The LMT questionnaire forms part of a Central Bank thematic review of LMTs, including the availability, use, calibration and governance of LMTs. See article on topic in this month's update for further details.
24 May		Irish Property Funds Irish property funds must comply with applicable provisions set out in the Central Bank paper 'Macroprudential measures for Irish property funds'.	See here for further details.
27 May		New prudential rules for fund managers with MiFID Top-Up New capital requirements apply to Irish fund management companies authorised to provide individual portfolio management (**IPM**) services on or before 27 November 2023.	See here for further details.
28 May		T+1 Settlement US transitions to T+1 settlement cycle.	See article on topic in this month's update for further details.
31 May		FCA Anti-Greenwashing Rule FCA's anti-greenwashing rules and associated guidance under the UK Sustainability Disclosures Regime (**SDR**) come into effect.	See here for further details.

25 June		Crypto- Assets ESMA's feedback deadline for third consultation package under the Markets in Crypto-Assets Regulation (**MiCA**).	See article on topic in this month's update 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.

Publication of Final text of AIFMD 2.0 and UCITS amending Directive

The text of Directive 2024/927/EU, which amends AIFMD (2011/61/EU) and the UCITS Directive (2009/65/EU), was published in the Official Journal of the EU on 26 March 2024 following a lengthy approval process, including intense trialogue negotiations during 2023, between the European Commission, Parliament and Council. Directive 2024/927/EU (**Amending Directive**) will enter into force on 15 April 2024 and will take effect in Member States on 16 April 2026.

The key changes being introduced by the Amending Directive relate to the following matters:

- Fund management company authorisation
- Expanded Range of services
- Delegation and substance
- Host FMCs
- Reporting and Disclosures
- Liquidity management tools
- Loan origination AIFs
- Depositaries
- Undue Costs

Fund Management Company Authorisation

An applicant fund management company (i.e. an AIFM or UCITS ManCo) (**FMC**) will be required to provide its Home Member State national competent authority (**NCA**) with more information as part of its authorisation application process. This will include (a) more detailed information about the persons effectively conducting the business of the FMC, reporting lines and arrangements made for the delegation and sub-delegation to third parties; (b) a detailed description of the human and technical resources employed by the FMC for performing day-to-day portfolio or risk management tasks within the FMC and the resources for monitoring the delegated activity, (c) in respect of each of the funds which the FMC manages or intends to manage; a brief description of the delegated portfolio management functions including whether such delegation amounts to a partial or full delegation; and a brief description of the delegated risk management functions including whether each such delegation amounts to a partial or full delegation.

Expanded Range of Services

The Amending Directive clarifies that FMCs can provide any other services that are already provided in respect of funds they manage (or related ancillary permissions) provided that conflicts of interest are appropriately managed. The list of top-up services for AIFMs will be expanded such that they may also provide (i) administration of benchmarks for AIFs (apart from benchmarks used in AIFs they manage) and (ii) credit servicing functions. The list of top-up services for UCITS ManCos will be expanded such that they may also provide (i) reception and transmission of orders in relation to financial instruments (ii) and administration of benchmarks (apart from benchmarks used in UCITS they manage).

The provision of non-core top-up services (investment advice, safekeeping and administration, receipt and transmission of orders, other services already provided subject to management of conflicts of interest) will helpfully be de-coupled from the current requirement for the FMC also to have an authorisation to carry out discretionary portfolio management activities. Annex I, point 2 of AIFMD will be expanded to include (i) originating loans on behalf of an AIF and (ii) servicing securitisation special purpose entities as new 'other' functions.

Delegation and Substance

Despite initial industry concerns that the delegation model long recognised in the management of UCITS and AIFs might be negatively impacted by the Amending Directive, this did not happen. The Amending Directive acknowledges the merits of delegation and the current structure will remain intact, subject to the strengthening of supervision, reporting and administration measures. FMCs will be subject to increased and more granular reporting requirements to their Home Member State NCA to in relation to delegation arrangements and sub-delegations). These are referred to under "Reporting and Disclosures " below.

The Amending Directive clarifies that the delegation rules apply to the 'top-up' services as well as the core functions. The FMC's liability to clients, the fund and its investors is also expanded to include delegated 'top-up' services as well as core functions and services and the Amending Directive makes clear that the FMC cannot delegate services or functions to the extent that, in essence, it becomes a letter-box entity. Delegation (or any further sub-delegation) of functions/services will not affect the FMC's liability, regardless of the regulatory status or location of any delegate.

In a welcome clarification, the Amending Directive provides that marketing carried on by distributors acting on their own behalf (rather than on behalf of the FMC) under MiFID or the EU Insurance Distribution Directive are not subject to the delegation requirements.

At least of two EU-resident natural persons who are employed by the FMC or are executive members/Board members should be appointed to conduct the business of the FMC on a full-time basis. This has no practical impact on Irish FMCs as the Central Bank of Ireland (**CBI**) expects a minimum of 3 full time equivalent to be engaged in each FMC.

Host FMCs

Where an FMC manages or intends to manage a fund at the initiative of a third party, including cases where that fund uses the name of a third-party initiator or where an FMC appoints a third-party initiator as a delegate, the FMC must, taking account of any conflicts of interest, submit detailed explanations and evidence of its compliance with conflicts of interest requirements to its Home Member State NCA. In particular, the FMC must specify the reasonable steps it has taken to prevent conflicts of interest arising from the relationship with the third party or, where those conflicts of interest cannot be prevented, how it identifies, manages, monitors and, where applicable, discloses those conflicts of interest in order to prevent them from adversely affecting the interests of the funds under management and their investors.

Reporting and Disclosures

The information to be reported to Home Member State NCAs following authorisation has been expanded. AIFMs will need to provide details of the current risk profile of the AIF, including the market risk, liquidity risk, counterparty risk, other risks including operational risk and the total amount of leverage employed by the AIF, detailed prescribed information regarding delegation arrangements concerning portfolio management or risk management functions, including the number of full-time equivalent human resources employed by the AIFM for performing day-to-day portfolio or risk management tasks within the AIFM; a list and description of the activities concerning risk management and portfolio management functions that are delegated; information on due diligence reviews of delegates and measures adopted to remediate issues identified, information on sub-delegation arrangements and the commencement and expiry dates of the delegation sub-delegation arrangements.

ESMA is mandated to develop by 16 April 2027, ITS for a new Annex IV reporting template, as well as RTS specifying, amongst other things, reporting frequency and timing.

The amendments to the UCITS Directive on reporting largely mirror the amendments to AIFMD.

The Amending Directive expands on the information that must be disclosed to investors before and after investment Information to be provided pre-investment now includes: the name of the AIF, a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF, the possibility and conditions for using the LMTs selected and a list of fees, charges and expenses that are borne by the AIFM in connection with the operation of the AIF and that will be directly or indirectly allocated to the AIF.

Liquidity Management Tools

The Amending Directive extends the current liquidity management provisions in AIFMD, with new obligations and powers for AIFMs that manage open-ended AIFs. An AIFM that manages an open-ended AIF is required to select at least two "appropriate" liquidity management tools (LMTs), based on an assessment of the suitability of those tools to its investment strategy, the liquidity profile and the

redemption policy of the AIF. They are to be selected from a list of nine LMTs set out in a new Annex V to AIFMD, namely:

1. Suspension of subscriptions, repurchases and redemptions
2. Redemption gate
3. Extension of notice periods
4. Redemption fee
5. Swing pricing
6. Dual pricing
7. Anti-dilution levy
8. Redemptions in kind
9. Side pockets

An AIFM cannot select only swing pricing and dual pricing as LMTS.

"Redemptions in kind" may only be used to meet redemptions by professional investors and if the redemption in kind corresponds to a pro rata share of the AIF's assets. The redemption in kind need not correspond to a pro rata share of the AIF's assets where the AIF is marketed solely to professional investors, or if the aim of that AIF is an ETF whose investment policy is to replicate the composition of a certain stock or debt securities index.

Money market funds will only be required to choose one LMT from points 2 to 8 above.

An AIFM of an open-ended AIF may, if it is in the interest of AIF investors, temporarily suspend the subscription, repurchase or redemption of the AIF units or activate side pockets. This measure should only be used in exceptional cases where circumstances so require and where justified, having regard to the interests of the AIF's investors. The AIFM must implement detailed policies and procedures for the activation and deactivation of any selected LMTs. The LMTs selected and the policies and procedures for their activation and deactivation must be communicated to the NCA of the AIFM's Home Member State.

Member States must ensure that the Annex V LMTs are available to AIFMs managing open-ended AIFs. The AIFM must include these LMTs in the AIF's rules or instrument of incorporation for possible use.

The AIFM must notify its Home Member State NCA, without delay when the AIFM activates or deactivates (a) the suspension of subscriptions, repurchases or redemptions (b) any other LMT other than in the ordinary course of business as envisaged in the fund rules or the instruments of incorporation of the AIF. The AIFM must notify its Home Member State NCA in a reasonable timeframe prior to the activation or deactivation of side-pockets.

The Home Member State NCA must notify, without delay, the NCAs of a host Member State of the AIFM, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.

ESMA is to develop draft RTS requirements to be met by a loan-originating AIF in order to maintain an open-ended structure and to specify the characteristics of the LMTs set out in Annex V.

By 16 April 2025, ESMA must also develop guidelines on the selection and calibration of the LMTs by AIFMs. The guidelines must recognise that the primary responsibility for liquidity risk management remains with the AIFM. The guidelines must also indicate the circumstances in which side pockets can be activated and are to allow adequate time for adaptation before they apply, in particular for existing AIFs.

The Amending Directive also similarly amends the UCITS Directive regarding the range of and use of LMTs. The amendments to the UCITS Directive on the range of and use of LMTs largely mirror the amendments to AIFMD.

Loan Origination AIFs

The Amending Directive introduces measures relating to AIFs performing loan origination activities in an effort to improve risk management across the financial market and improve transparency for investors.

While the new rules seek to harmonise the regime applicable to AIFMs that manage the AIFs that originate loans, the recitals provide that Member States may lay down national product frameworks that define certain categories of AIFs with more restrictive rules. A Member State may prohibit AIFs that originate loans from granting loans to consumers or from servicing credits granted to such consumers in its territory. The current CBI rules relating to AIF loan origination are generally more restrictive than the loan origination regime provided for in the Amending Directive.

The Amending Directive defines "loan origination" or "originating a loan" as "the granting of a loan (i) directly by an AIF as the original lender or (ii) indirectly through a third party or special purpose vehicle, which originates a loan for or on behalf of the AIF, or for or on behalf of AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan".

AIFMs are required to implement effective policies, procedures and processes for the granting of loans and to implement effective policies, procedures and processes for assessing the credit risk and for administering and monitoring their credit portfolio. AIFMs must keep those policies, procedures and processes up to date and effective and review them regularly and at least once a year.

A loan-originating AIF is defined as an AIF (i) whose investment strategy is mainly to originate loans, or (ii) where the notional value of the AIF's originated loans represents at least 50% of its net asset value.

Loan-originating AIFs must be closed-ended, except where the AIFM can demonstrate that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy. ESMA is tasked with developing draft RTS to determine the requirements with which such an AIF has to comply in order to remain open-ended.

Loan-originating AIFs must have a leverage limit of 300% for closed-ended AIFs and 175% for open-ended AIFs. The leverage percentage is expressed as the ratio between the exposure of the AIF (calculated using the commitment method) and its net asset value.

There is a loan concentration limit to a single borrower of 20% of the AIF's capital if the borrower is a financial undertaking, an AIF or a UCITS. Shareholder loans will be exempt from the requirements if the loans' notional value does not exceed in aggregate 150% of the AIF's capital.

AIFMs must ensure that the managed AIF retains 5% of the loans originated and subsequently transferred to third parties (i) until maturity, for originated loans with a maturity of up to eight years or for loans granted to consumers regardless of their maturity, and (ii) for other loans, for at least eight years. Derogations from the risk retention rules are permitted where or the AIFM starts to sell assets of the AIF in order to redeem units as part of the liquidation of the AIF or where the sale of the loan is necessary to enable the AIFM to implement its investment strategy, to comply with EU sanctions or with "product requirements, or is due to a deterioration in the risk associated with the loan.

Where an AIF originates loans, the proceeds of the loans, minus any allowable fees for their administration, are to be attributed to that AIF in full.

Member States must prohibit AIFMs from managing AIFs that originate loans for the sole purpose of distributing them (" originate to distribute").

There will be transitional rules for (i) pre-15 April 2024 AIFs originating loans (up to five years ending in April 2029) with a possibility for AIFMs to opt in, and (ii) pre-15 April loans.

Depositaries

Currently, an AIF's depositary must be established, for EU AIFs, in the home Member State of the AIF and for non-EU AIFs, in the third country where the AIF is established or in the AIFM's home Member State.

The Amending Directive provides that an EU AIF's Home Member State may allow institutions established in another Member State to be appointed as a depositary, subject to compliance with certain conditions (e.g. if the AIFM has asked the NCA to allow it to appoint a depositary in another Member State and has demonstrated a lack of relevant depositary services to effectively meet the needs of the AIF in the AIF's home Member State and the level of AIF assets in safe-keeping in the EU AIF's Home Member State is not more than € 50 billion).

The assessment must be made on a case-by-case basis each time an AIFM wishes to appoint a depositary in another Member State. Such depositaries will need to co-operate not just with their own NCA but also those of the AIF and (if different) the EU AIFM.

The Amending Directive introduces some changes to the conditions for appointing a depositary in a third country by a non-EU AIF. A non-EU AIF may only appoint a depositary in its home jurisdiction if it is (i) not identified as a high-risk third country pursuant to the EU's fourth Anti-Money Laundering Directive and (ii) not mentioned in Annex I to the revised EU list of non-cooperative jurisdictions for tax purposes.

If the depositary is not in breach of the requirements at the time of authorisation but is subsequently identified as being in a high-risk third country or a country that is added to the so-called tax blacklist, a new depositary must be appointed within an "appropriate" period of time, taking due account of the interests of investors, and within two years in any event.

The Amending Directive clarifies that delegation by a UCITS or AIF depositary to a central securities depositary (CSD) does not constitute a delegation of custody where the CSD is an "issuer" CSD (i.e. is providing the services of (i) initial recording of securities in a book-entry system; or (ii) providing and maintaining securities accounts at the top tier level) as opposed to acting as an "investor" CSD (i.e. a CSD which (i) is a participant in a securities settlement system operated by another CSD; or (ii) is using a third party or intermediary that is participant in a securities settlement system operated by another CSD in relation to a securities issue). Ex-ante due diligence does not have to be carried out by the depositary in the selection and appointment of investor CSDs (as this is considered to be work unnecessary to be carried out by the depositary).

Undue Costs

As a compromise to the EU Parliament's demand for specific measures to be introduced on costs, ESMA is required to prepare a report within by 16 October 2025 reasons for and differences in the costs charged to retail investors in AIFS and UCITS and analysing whether the criteria set out in ESMA's 2020 supervisory briefing on undue costs should be complemented with regard to the notion of undue costs.

Next Steps

The Amending Directive must be transposed into the laws of the Member States by 16 April 2026. Level 2 and Level 3 Measures also need to be prepared. The amendments will impact all FMCs, AIFs and UCITS, some significantly. Industry participants should be familiarising themselves with the proposed changes and consider how they impact current product lines, policies and procedures, constitutions and offering documents

ELTIF 2.0 Revision of the Central Bank of Ireland's AIF Rulebook

On 11 March 2024, the Central Bank of Ireland (**CBI**) published their revised AIF Rulebook which contains a dedicated ELTIF chapter. Under the revised Rulebook, ELTIFs are a discrete AIF product type separate to Ireland's qualifying investor AIF (**QIAIF**) and retail investor AIF (RIAIF) product options.

Following the publication of the revised AIF Rulebook, the CBI is now in a position to authorise ELTIFs. Some of the key elements of the new ELTIF chapter of the AIF Rulebook include:

- there will be three types of Irish ELTIF: a professional investor ELTIF, a retail investor ELTIF and a qualified investor ELTIF. In this context, the Rulebook defines "retail investor" and "professional investor" by reference to the definition of each term in the amending ELTIF Regulation. A "qualified investor" is defined as: (i) an investor who is a professional client under MiFID II; or (ii) an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge; or (iii) an investor who certifies that they are an informed investor.
- the Rulebook provides for the use of umbrella structures to establish ELTIF sub-funds, with it being possible to establish ELTIF and non-ELTIF sub-funds in the same umbrella. In this regard, existing or new RIAIF and QIAIF umbrellas will be able to incorporate retail or professional or qualified investor ELTIF and non-ELTIF sub-funds subject to certain requirements.
- the QIAIF 24-hour authorisation framework will be available for professional investor and qualified investor ELTIFs. A qualified investor ELTIF which is not restricted to professional investors will be subject to the investment restrictions, portfolio composition requirements and investor protection requirements that apply to retail investor ELTIFs.

Next Steps

The updates to the AIF Rulebook will meet the needs of both ELTIF investors and ELTIF sponsors, making Ireland a very attractive jurisdiction for the establishment of ELTIFs.

ESMA Regulatory Technical Standards

The amending ELTIF Regulation envisaged that ESMA would develop draft regulatory technical standards (**RTS**) to determine matters such as the circumstances in which the life of an ELTIF is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF.

On 19 December 2023, ESMA published its final report setting out the draft RTS. The following are the key provisions of the draft RTS:

Minimum holding period

The ELTIF manager may select the minimum holding period that is best adjusted to an individual ELTIF, based on criteria set in the RTS, but must justify the holding period to the ELTIF's competent authority.

Maximum redemption frequency

ESMA proposes to have a maximum quarterly redemption frequency, while allowing the ELTIF's manager to deviate from it provided it is able to justify the deviation to the ELTIF's competent authority.

Choice of liquidity management tools

The manager of an ELTIF would be required to select at least one anti-dilution mechanism (in addition to a redemption notice period), and redemption gates, provided that the ELTIF manager could use another anti-dilution mechanism provided it is able to justify the use of that mechanism to the ELTIF's competent authority.

Notice period and maximum percentage of liquid assets that can be redeemed –

The RTS contains a table which sets out the minimum percentage of liquid assets that an ELTIF must hold based on the number of days' notice an investor must provide if it wishes to redeem its units in the ELTIF. This table also imposes a maximum percentage of liquid assets that can be redeemed on any one dealing day, again based on the ELTIF's redemption notice period.

The table is reproduced below:

Redemption Notice period	Minimum percentage of liquid assets	Maximum percentage referred in Article 18(2)(d)
Less than 1 year to 9 months (included)	13%	50%
Less than 9 months to 6 months (included)	27%	45%
Less than 6 months to 3 months (included)	40%	40%
Less than 3 months to 1 month (included)	40%	35%
Less than 1 month	40%	20%

A number of asset managers and industry bodies have raised concerns that the requirements to maintain a higher amount of liquid assets will dampen returns for ELTIF investors, making the product less commercially appealing, while the redemption restrictions could limit distribution opportunities.

Next Steps

On the date of their publication by ESMA (19 December 2023), the draft RTS were submitted to the European Commission for adoption. From the date of submission, the European Commission had three months to decide whether to adopt the RTS in whole or in part or to request changes.

On 6 March 2024, the Commission sent a letter to ESMA in which the Commission outlined its intention to adopt the RTS with the following amendments:

- material changes to an ELTIF's redemption policy should be notified to the national competent authority before they take effect, unless such material changes are beyond the control of the manager of the ELTIF.
- the draft RTS should be amended to remove the requirement for a minimum 12-month redemption notice period
- the liquidity related requirements linked to redemption notice periods requirements set out in the draft RTS should be amended and should specifically take into account the principle of proportionality, the existing market practices for retail long-term funds and the individual situation of ELTIFs
- the draft RTS should not introduce new ELTIF-specific requirements with respect to selecting and implementing liquidity management tools which are beyond those set out in Article 18(2) of the ELTIF Regulation or which otherwise limit the capacity of ELTIF managers to select and implement liquidity management tools
- the draft RTS should be amended to ensure that the implementation and activation of redemption gates is not limited to “certain specific circumstances” or exclusively contingent on the notice period set out in the calibration table proposed by the draft RTS
- the draft RTS should be amended in a manner that ensures a better alignment of the cost disclosure requirements of the ELTIF Regulation with those of the PRIIPs Regulation, MiFID and the AIFMD

ESMA now has a period of 6 weeks to amend the draft RTS on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission. After the Commission has adopted the RTS it must be endorsed by the Council and Parliament of the EU. Accordingly, the RTS will likely not enter into effect until Q4 this year.

MiCA draft new technical standards and consultation issues from ESMA

On 25 March 2024, the European Securities and Markets Authority (**ESMA**) issued draft implementing technical standards (**ITS**) and regulatory technical standards (**RTS**) to the Markets in Crypto Assets Regulation (Regulation (EU) 2023/1114 (**MiCA**) (t**he Report**).

The Report specifies requirements for co-operation between competent authorities, the European Supervisory Authorities (**ESAs**) and third countries under MiCA; detailed rules for the information required where certain financial entities wish to notify their intention to provide crypto-asset services; and information required for the authorisation of Crypto Asset Service Providers (**CASPs**). The Report also details how complaints should be managed by CASPs and the procedures that should be followed. RTS on conflicts of interest for CASPs (in accordance with Article 72(5) of MiCA) are to follow. ESMA will now submit the technical standard to the European Commission for adoption.

Also on 25 March last, ESMA published its third consultation package under MiCA. ESMA is seeking input on four sets of proposed rules and guidelines in this consultation covering:

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

Next steps

The consultation is open for feedback until the 25 June 2024. Final rules, following review of the consultation feedback, will be submitted by ESMA to the European Commission for endorsement by 30 December 2024 at the latest.

Revised Central Bank of Ireland's Prospectus Regulatory Framework Q&A

On 7 March 2024, the Central Bank published the Prospectus Regulatory Framework – Questions & Answers 2nd Edition (**Revised Prospectus Q&A**). The Revised Prospectus Q&A is relevant to closed ended fund and addresses the approval, publication and passporting of prospectuses under the Prospectus Regulation and related measures.

Dialogue with Central Bank

According to the Revised Prospectus Q&A, firms should now engage with the Central Bank prior to the first submission of a prospectus for approval.

ESEF - Incorporation by reference

The Revised Prospectus Q&A confirms that financial statements of issuers with securities admitted to trading on EU regulated markets that have been prepared in the single electronic reporting format (ESEF) may be submitted in that format to the Central Bank for incorporation by reference into a prospectus (as an alternative to portable document format (or pdf)).

Passporting

When a translated summary of the prospectus is prepared for passporting, the Revised Prospectus Q&A specifies that the translation must be accurate. This is a change from the previous Q&A that called for an exact translation. The Revised Prospectus Q&A confirms that a passport request should be submitted to the Central Bank in respect of each supplement to a passported prospectus, following which the Central Bank will send a passport notification in respect of the supplement to the relevant host member state(s).

EMSA feedback on shortening the EU settlement cycle

On 21 March 2024, ESMA published feedback received to its Call for Evidence on shortening the EU settlement cycle.

The feedback to the Call for Evidence focussed on four areas:

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

Next Steps

ESMA confirms that it will continue assessing the responses received, including the demands for regulatory/supervisory guidance, and aims at including lessons learnt from the US move to T+1 as well as any further feedback received from stakeholders in the APAC region, from small and medium market participants and retail investors and their representatives. ESMA intends to deliver its final assessment to the European Parliament and to the Council before 17 January 2025.

Forthcoming Central Bank Thematic Reviews

Over the course of 2024, the Central Bank will carry out a thematic review of Irish funds' use, calibration and governance of liquidity management tools (**LMTs**) (the **LMT thematic**).

The LMT thematic follows, and is likely to be informed by:

- the publication in December 2023 of the Financial Stability Board's Revised Policy Recommendations to address structural vulnerabilities from liquidity mismatch in open-ended funds and IOSCO's Guidance on the use of anti-dilution LMTs by fund managers of open-ended funds (see here for further details);
- the Central Bank's July 2023 discussion paper on a macroprudential framework for investment funds (see here for further details); and
- the Central Bank's recent Regulatory Supervisory Outlook Report 2024, in which it highlighted its focus on liquidity risks. The Central Bank considers liquidity, along with leverage, as one of the key areas of risk arising out of the macroeconomic and geopolitical environment (see here for further details).

The Central Bank confirmed its intention to carry out the LMT thematic to Irish Funds (industry body) which noted that the thematic will "*focus on the availability, use, calibration and governance of LMTs and will be split into three parts:*

1. ***Late April/early May 2024*** *- A quantitative-based questionnaire will be issued for all sub-funds, including MMFs and ETFs. This will focus on how LMTs are used, by whom and when.*
2. ***Quarter 3, 2024*** *– There will be a targeted follow-up questionnaire to a smaller sample of funds, based on the responses from the initial questionnaire. This will be more qualitative in nature.*
3. ***Quarter 4, 2024*** *– There may be further follow-up depending on the outcome of the targeted review."*

In addition to the LMT thematic, the Central Bank confirmed to Irish Funds that a questionnaire on securities lending (13 questions in total) will issue very shortly to a sample set of 30 fund management companies.