BRIDGE
CONSULTING

Quarter 3 2017 Regulatory Update

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1. CP 86 – Consultation Paper on Fund Management Company Effectiveness

Implementation Date: 1 July 2018

On 19 December 2016 the Central Bank of Ireland released its Feedback Statement on the third consultation of the Consultation Paper 86 ("CP86") process. This concludes the consultation process which the Central Bank began in early 2014 to examine Governance, Compliance and Effective Supervision. The Central Bank also published the Guidance for Fund Management Companies updated for (i) Managerial Functions; (ii) Operation Issues; and (iii) Procedural Matters sections.

The documents published can be found at the following link:

https://www.centralbank.ie/news/article/central-bank-publishes-outcome-of-third-consultation-on-fund-management-company-effectiveness

Key Impacts for Fund Boards Resulting from 3rd Consultation

1. **Managerial Functions** – the guidance on the Managerial Functions has been largely unchanged
2. **Internal Audit** – the allocation of Internal Audit remains within the 'Organisational Effectiveness' role, however the guidance gives leeway for management companies to allocate differently should they feel it more appropriate
3. **Location Rule** – the most contentious of the proposed rules in the third consultation have been diluted in the final guidance. The final rules are as follows:
    a. A management company with a PRISM rating of **Medium Low** or above will have as least:
        i. 3 directors resident in the State or, at least 2 directors resident in the State and one Designated Person resident in the State,
        ii. Half of its directors resident in the EEA *(replacing the proposed two-thirds rule)*, and
        iii. Half of its managerial functions performed by at least 2 designated persons resident in the EEA
    b. A management company with a PRISM rating of **Low** will have as least:
        i. 2 directors resident in the State,
        ii. Half of its directors resident in the EEA *(replacing the proposed two-thirds rule)* and
        iii. Half of its managerial functions performed by at least 2 designated persons resident in the EEA
4. **Retrievability of Records** – the guidance outlines its expectations in respect of record retention, archiving and retrievability (with specific response times listed regarding requests for data from the Central Bank). It also refers to the Dedicated Email Address that is required.
5. **Timeline to Comply** – the transition period of 12 months originally signalled in the consultation has been extended to allow existing Fund Management Companies until 1 July 2018 to comply. New applications post 1 July 2017 must comply. The new rules will be included in the amended Central Bank UCITS Regulations and AIF Regulations.

Fund Management Companies – Guidance

The first three sections of the Fund Management Company Guidance was published in November 2015. The addition of the final three sections of the Guidance for Fund Management Companies results in Guidance consisting of the following sections:

i.	Delegate Oversight	iv.	Managerial Functions
ii.	Organisational Effectiveness	v.	Operational Issues
iii.	Directors' Time Commitments	vi.	Procedural Matters

Note:

- Designated email addresses submitted to the CBI are now live since 30 June 2017.

Impact:

A full gap analysis of CP86 and the full regulatory requirements has been completed by Bridge Consulting. Bridge is currently working with fund boards and implementing it's CP86 implementation plan.

Bridge Consulting is also producing a series of articles examining the impact of CP86 and these can be found in the Bridge Consulting Documents Library http://bridgeconsulting.ie/regulatory-updates-page/.

2. Beneficial Ownership

In November 2016 the Department of Finance transposed the requirement for corporate and other entities incorporated in a Member State to 'obtain and hold adequate, accurate and current information on their beneficial ownership via the European Union (Anti-Money Laundering; Beneficial Ownership of Corporate Entities) Regulations 2016.' The goal of the legislation is for that all corporate and legal entities identify the natural person or persons who are their underlying beneficial owners. This is to facilitate a central register of beneficial owners which will be required as part of the implementation of the 4th EU Money Laundering Directive.

The regulations impact both regulated and unregulated companies so this includes fund vehicles such as ICAVs, UCITS and AIFs as well as those established under the Companies Act 2014. Sanctions will be applied if companies are found to be in breach and not maintaining a register.

This poses a number of challenges for fund entities and we expect further guidance in due course. The issues which are unique to funds, as opposed to other corporate entities, are the fact that the ownership of a fund is fluid and can change on a day to day basis. In addition, there may be a number of sub-funds but only a singe corporate entity.

It would appear that in cases where beneficial owners cannot be confirmed the Regulations stipulate that Senior Management officials (including the Board of Directors) will be deemed to be the beneficial owners. The register should be updated with the following details in respect of beneficial owners on the register:

- *Name/Date of birth/Nationality/Residential Address/Confirmation of the nature and extent of interest*

The Companies Registration Office published a Template of Data Fields that must be included on the register and announced that the Register of Beneficial Ownership is likely to be in place by Q4 2017 and there will a 3 month period in which to file, without being in breach of the statutory duty to file.

Impact: *Discussions are ongoing between Irish Funds and the Department of Finance as to the specific requirements for the funds industry.*

In the meantime, Bridge is recommending a register be established and necessary steps are taken to determine if there are any holders who own 25% or more of the issued share capital at umbrella level.

If there are no such holders at present, the Senior Managing Officials i.e. the Board will be listed on the register.

3. Filing of Suspicious Transaction Reports – GoAML

From 12 June 2017 all suspicious transaction reports (STRs) are to be submitted to the Financial intelligence Unit (FIU) of an Garda Siochána by way of a new software solution, namely GoAML.

GoAML is a software solution developed by the UN office of drugs and crime which allows rapid and secure exchange of information between the FIU, reporting entities and law enforcement and intelligence authorities. From 12 June 2017, all communications (including STRs) between the FIU and reporting entities will be conducted through the message board function within the GoAML application.

It is important that all Reporting Entities register as a user so that they are prepared for filing STRs and so that they receive any alerts and communications on trends and typologies as soon as they issue. Bridge have completed the registration of all the funds for which we act as MLRO with GoAML.

Dual reporting of STRs remains a requirement and all Reporting Entities must submit STR's to both the FIU and the Office of the Revenue Commissioners. The Office of the Revenue Commissioners will accept a printed copy of the STRs submitted on GoAML, and this printed copy can be posted to the Office of the Revenue Commissioners directly.

4. Fourth Money Laundering Directive – 4MLD

On 20 January 2017, the Department of Justice and Equality published the General Scheme of a Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill. This is the implementing legislation for the transposition of the 4MLD and will amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 which gave effect to the 3rd EU Money Laundering Directive, it will also align the provisions with the recommendations of the Financial Action Task Force (FATF). Irish Funds provided detailed comment/feedback on the Bill to the Department of Justice in April 2017.

In May 2015, the European Parliament adopted the Fourth Money Laundering Directive (4MLD) and Member states were due to transpose the Directive into national law by 26 June 2017. In Ireland draft legislation has been prepared but this has been delayed until Q4 2017 when it is estimated that the European Parliament will adopted the Fifth Money Laundering Directive. A final date is to be confirmed.

The key provisions of the Directive are as follows:

- ***Transparency**: EU Member States for the first time will be obliged to maintain registers with information on the beneficial owners of both corporate and legal entities as well as trusts. In addition to Competent Authorities who will have access to these registers without any restrictions, any person who can* *demonstrate a legitimate interest, such as investigative journalists or concerned citizens, will also be able to access the central registers.*

- ***The extension of the Politically Exposed Person (PEP) regime** to cover domestic PEPs and persons entrusted with a prominent function by an international organisation.*
- ***The removal of the automatic entitlement to apply Simplified Customer Due Diligence** ("Simplified CDD") when dealing with specified customers and products.*
- ***An increased range of sanctions** which may be imposed for breaches by Designated Persons of their AML and CTF obligations.*
- ***The introduction of risk assessments at EU and national level**. It is proposed that these risk assessments will be shared with Designated Persons to assist them in preparing their own risk assessment of their business and customers.*

5. Fifth Money Laundering Directive – 5MLD

In October 2016 the European Council published proposed amendments to the 4MLD which will form the basis of 5MLD. This is currently under review within the European Parliament. The implementation date has yet to be determined.

The proposed changes include amendments regarding:

- *Public Access to Beneficial Ownership Registers*
- *Virtual Currencies*
- *Prepaid Instruments*
- *Increased Information Sharing between Member States*
- *Enhanced Due Diligence and High Risk Jurisdictions*

6. General Data Protection Regulation (GDPR)

Implementation Target Date: 25 May 2018

The GDPR represents a radical EU-wide overhaul of existing data privacy legislation. Irish funds need to ensure that they are in full compliance with the GDPR (and to be able to demonstrate how they comply with their data protection responsibilities) by 25 May 2018. Funds are in scope where they "control and are responsible for the keeping and use of personal information on computer or in structured manual files", for example, where they obtain and process customer due diligence documentation for AML/CTF purposes. They will therefore be subject to specific statutory obligations under the GDPR, and liable to hefty fines of up to €20 million or 4% of annual turnover, as well as compensation claims from individuals for pecuniary or non-pecuniary loss (such as emotional distress) resulting from any infringement of the GDPR.

The GDPR will likely trigger some, if not all, of the below actions by funds.

1) An assessment of all the personal data which a fund holds and the purpose of collecting and processing it.
2) A review of how the fund is currently capturing investors' consent to processing of their personal data, and consideration of whether this meets the more onerous requirements of the GDPR.

3) A fund will also need to ensure it can report a breach to the Data Protection Authority within the statutory 72 hour time-limit.

4) A review and update of fund prospectus and subscription forms to meet the increased information right of individuals. Funds will be required to provide a myriad of additional information to individuals at the time their data is collected, to ensure their data processing activities are transparent.

5) A review and updating of current agreements with third party service providers (such as Administration Agreements) to include the more prescriptive obligations of service providers which the GDPR requires.

6) A review of arrangements to ensure that the fund and/or any of its delegates will not transfer personal data to a country outside of the EEA unless that country ensures an adequate level of data protection or appropriate safeguards are in place.

7) An assessment of the new and enhanced rights of individuals and obligations on the fund and its delegates. A fund will have to respond to an individual's request to access, erase, rectify, port, restrict or object to the processing of their data, within the one month statutory time-limit.

Funds need to factor in the time required to agree new provisions (particularly with service providers) as well as allowing time for clearing documentation with the Central Bank, where appropriate.

<u>Impact</u>: Funds entities should liaise with their legal advisors to ensure all the required documentation is updated in advance of 25 May 2018.

7. Companies Act 2017

The Companies (Accounting) Act 2017 came into operation on the 9 June 2017, the main purpose of which was to transpose the EU Accounting Directive into Irish law.

Heretofore, investment companies (whether UCITS or AIFs) have not been obliged to file accounts with the CRO in addition to their filing obligations with the Central Bank. This exemption from filing is not available under the EU Accounting Directive.

Consequently, the principal provision applicable to fund is the mandatory CRO filing of UCITS and AIF annual accounts which will apply to any financial year which commenced on or after 1 January 2017. The annual accounts will be required to be filed with the CRO not later than 11 months after the financial year end.

Some investment funds which are constituted as investment companies may consider converting to an ICAV which is not obliged to file annual accounts in CRO.

<u>Impact</u>: Financial Statements of UCITS and AIFs will need to be filed with the CRO for financial periods commencing on or after 1 January 2017.

8. EMIR – Margin Rules

Implementation Date: March 2017

Background

EMIR rules have recently came into effect governing the exchange of collateral between parties to non-cleared OTC derivatives. These require you to have in place risk management procedures for the exchange of collateral in relation to your non-cleared OTC derivatives. In accordance with Article 2(2) of the EMIR Margin Rules, the risk management procedures must specify or provide for a number of matters generally relating to arrangements for the exchange of collateral for non-cleared OTC derivatives, including (amongst other matters) the eligibility of collateral, the calculation and collection of the amount of collateral due and the valuation of collateral collected from the counterparties applying appropriate haircuts, in each case, in accordance with the EMIR Margin Rules.

Timeline

1. Initial margin
   Where both counterparties have, or belong to groups each of which has, an average notional amount of non-cleared OTC derivatives over a threshold of €3 trillion, they have been required to exchange variation margin since 4 February 2017. The initial margin requirements are being phased-in between February, 2017 and September 2020 when the threshold will be €8 billion.

2. Variation margin
   1 March 2017 is the deadline for the application of variation margin.

In February 2017 the CFTC advised that it would allow swap dealers a six-month grace period to comply with the 1 March 2017 variation margin rules deadline that was applicable in the U.S.

Exemptions

Chapter II of the EMIR Margin Rules provide for the following exemptions from the requirement to collect and post variation and initial margin in relation to non-cleared OTC derivatives;

a) Minimum transfer amount.
   The maximum permissible minimum transfer amount that may be applied under the EMIR Margin Rules is EUR 500,000 (or its equivalent in another currency).

b) Exemptions from the initial margin requirement

   (i) Specific FX contracts (physically settled FX forwards and swaps, cross currency interest rate swaps involving the exchange of notional amounts)
   (ii) Below threshold notional amounts (currently €8 billion)
   (iii) Below threshold initial margin amounts (currently €50 million)

Impact / Next Steps: Counterparties (including CIS) will need to update risk management procedures to allow for the efficient transfer of appropriately calculated collateral for in scope OTC derivatives. This should include a policy on acceptable collateral, parties responsible for calculation, valuation and timely exchange of collateral. The policy should allow for periodic review of the arrangements in place to ensure compliance with the EMIR rules.

Counterparties are expected to adhere to the ISDA 2016 variation margin Protocol or update their existing ISDA CSAs to reflect the new rules.

9. PRIIPS Regulation

Revised Implementation Date: 1 January 2018

The EU Commission adopted guidelines for the Key Information Document (KID), which is required under the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs) by 1 January 2018.

The PRIIPS Regulation sets out rules on the format and content of the KID to be drawn up by PRIIP manufacturers and on the provision of the KID to retail investors and those selling or advising on the products. These guidelines are intended to help providers and distributors of investment products, funds and investment insurance policies design their KIDs by smoothing out potential interpretative divergences throughout the EU.

New and existing RIAIF products must be accompanied by a PRIIPs KID from 1 January 2018. Professional Investor AIFs are likely to fall within the scope of PRIIPs Regulation. QIAIFs which do not limit investor eligibility to MiFID professional clients will also be caught by the PRIIPs Regulation (and so be obliged to prepare a PRIIPs KID). Examples of the types of investors in QIAIFs who would not be MiFID professional clients would include high net worth individuals, corporate investors who are not regulated to operate in the financial markets or corporate investors whose main activity is not investing in financial instruments. Some QIAIFs may choose to limit access to the fund to MiFID professional clients only so as to fall outside the scope of the PRIIPs Regulation. UCITS are exempt from the obligation to produce a PRIIPs KID until 31 December 2019. In due course, the PRIIPs Regulation will be subject to review which will assess whether the transitional arrangements for UCITS should be prolonged, or whether, with some adjustments, the UCITS KIID might be replaced by or considered equivalent to the PRIIPs KID. Where funds are wrapped into insurance products, they may be required to provide supplementary information or data to enable the underlying insurance company to produce the PRIIPs.

Impact: Some AIFs, QIAIFs and RIAIFs will be impacted by the 1 January 2018 deadline (depending on their investor base). UCITS will not need to comply until 31 December 2019.

10. Benchmarks Regulation

Implementation Date: 1 January 2018

The Benchmarks Regulation aims to contribute to the accuracy and integrity of benchmarks used in financial instruments and financial contracts or to measure the performance of investment funds by:

- ensuring that benchmark administrators are subject to prior authorisation and on-going supervision depending on the type of benchmark (e.g. commodity or interest-rate benchmarks);
- improving the governance of benchmarks (e.g. management of conflicts of interest) and requiring greater transparency of how a benchmark is produced; and
- ensuring the appropriate supervision of critical benchmarks, such as Euribor/Libor, the failure of which might create risks for many market participants and even for the functioning and integrity of markets of financial stability.

Impact: Existing UCITS and AIFs will need to ensure that the benchmarks they use are working to comply with the Benchmarks Regulation or find an alternative.

Supervised entities (including UCITS, UCITS ManCos, AIFs and AIFMs) will not be permitted to use unregulated benchmarks as a benchmark in the EU from 1 January 2018 (subject to transitional provisions).

Supervised entities (including UCITS, UCITS ManCos, AIFs and AIFMs) will only be permitted to use non-EU benchmarks as a benchmark in the EU if the benchmark is qualified under the third country regime (again, subject to transitional provisions).

Impact: UCITS prospectuses which reference a benchmark and which have been approved prior to 1 January 2018 will need to be updated at the next update and in any event by no later than 1 January 2019 to include information on the benchmark.

11. ESMA opinions to support supervisory convergence in EU27 in the context of Brexit

On 13 July 2017, the European Securities and Markets Authority (ESMA) published the following opinions to support supervisory convergence in the context of the UK leaving the EU:

- Opinion on investment firms which addresses regulatory and supervisory arbitrage risks related to the relocation of investment firms' activities.
- Opinion on investment management which addresses regulatory and supervisory arbitrage risks related to the relocation activities of UCITS management companies, self-managed investment companies and authorised AIFMs.
- Opinion on secondary markets which addresses regulatory and supervisory arbitrage risks stemming from third country trading venues (regulated markets, multilateral trading facilities and organised trading facilities) relocating to the EU27 and seeking to outsource activities to their jurisdiction of origin.

The opinions provide guidance which is intended to ensure a consistent interpretation of the requirements relating to authorisation, supervision and enforcement, with a view to avoiding regulatory and supervisory arbitrage risks.

While the opinion on investment management addresses regulatory and supervisory arbitrage risks related to any relocation activities of UCITS management companies, self-managed investment companies and authorised AIFMs, it also opines on the interpretation of the delegation requirements and the common supervisory focus. It sets out principles based on the objectives and provisions of the UCITS Directive and AIFMD and addresses regulatory and supervisory risks in relation to authorisation, governance and internal control, delegation and effective supervision.

Some key points are noted below.

- Authorisation

A relocating UK entity must undergo a full authorisation process. The opinion notes that EU investment management legislation does not provide for any reliance on previous or existing authorisations in other member states or third countries and there are no transitional provisions.

- Effective Supervision

National competent authorities (NCAs) should consider the group structure and location of shareholders so as to ensure that this is not an obstacle to effective supervision.

- Objective Reasons for Choice of Jurisdiction

NCAs must assess whether the relocating UK entity has provided a clear justification for relocating to a particular Member State (to avoid regulatory arbitrage).

- Governance

Governance structures and internal control mechanisms should be calibrated to the nature, scale and complexity of the business and the activities carried out. The opinion sets out details of criteria to be assessed.

Where authorised entities are part of a corporate group, NCAs should be satisfied that there are no reporting lines to group functions or other individuals within the group that would contradict the principle of avoiding or mitigating conflicts of interests or impair the independence of internal control functions.

While the EU investment management legislation sets out that authorised entities must have at least two Senior Managers, NCAs should not rely on this minimum number for all authorised entities without taking account of the actual size of their business and/or complexity, nature and range of their business activities. NCAs should also be able to carry out on-site visits of a ManCo without notice and meet with its senior management at short notice.

Combining the risk, compliance and/or internal audit functions should generally be avoided as this is seen as likely to undermine the effectiveness and independence of these control functions.

- Time Commitments

NCAs should consider issuing guidance on appropriate thresholds (in terms of aggregate time commitment) for directors and senior managers and be transparent about their expectations.

- Delegation

ESMA notes that the AIFMD delegation requirements have been specified in level 2 provisions, unlike the UCITS delegation requirements. ESMA concludes that the NCA's interpretation of the UCITS Directive and the relevant national laws should be consistent with the principles set out in he AIFMD Level 2 provisions.

NCAs must satisfy themselves that there are objective reasons for the entire delegation structure and should carry out a case by case analysis.

Specific considerations are set out in respect of delegation of portfolio management or risk management to non-EU entities. NCAs should give special consideration to the appointment of investment advisers so as to ensure that the delegation rules are not circumvented. ESMA opines that where EU managers appoint, and base their investment decisions on, third party investment advice, then if managers make investment decisions without carrying out their own qualified analysis before concluding a transaction, such arrangements are to be considered as being a delegation of investment management activities. Moreover, NCAs should be satisfied that the policies and procedures of authorised entities provide for clear documentation and recordkeeping of their own qualified analysis carried out after the receipt of investment advice.

- Substance

Authorised entities should not delegate investment management functions to an extent that exceeds by a substantial margin the investment management functions performed internally.

NCAs should apply additional scrutiny to situations where relocating entities (even those of smaller size employing simple investment strategies and having a limited range of business activities) do not dedicate at least 3 locally-based FTE (including time commitments at both Senior Management and staff level) to the performance of portfolio management and/or risk management functions and/or monitoring of delegates.

NCAs will need to ensure that authorised entities relocating from another member state transfer a sufficient amount of portfolio management and/or risk management functions to avoid a scenario where (i) substantially more portfolio management and/or risk management functions continue to be carried on under a delegation back to their original member state and; (ii) the entity maintains substantially more relevant human and technical resources in the original member state despite the relocation.

The Central Bank has added an FAQ section to its web site that focuses on Brexit. The information provides an overview of the regulator, the regulator's activities and it's approach to the authorization process and how it is dealing with applications from the UK.

12. UCITS & AIF Share Classes

On 28 June 2017 the Central Bank updated its requirements and guidance regarding UCITS and AIF Share Classes. This was a following the ESMA opinion on Share Classes that was issued on 30 January 2017. The CBI's requirements focus on the following areas;

- Differences in the structuring of share classes
- Currency Hedging / Hedging Costs and how these are applied at the share class level
- Counterparty Exposure limits versus UCITS Regulations
- Interest Rate Hedging
- Different Levels of Participation or Capital Protection
- Information outlined in the funds constitutional documents
- Valuations Systems ability to identify and value the hedge transactions

In order to provide clarity for stakeholders, the Central Bank previously published some additional Q&As in the eighteenth edition of the UCITS Q&A document.

Impact: Funds entities should determine if their existing share class hedging arrangements meet the provisions of the ESMA opinion and Central Bank guidance. Any updates or amendments to documentation arising out of this review should be made at the time of the next update to the Fund's prospectus or supplement.

13. CBI Suitability Themed Review/MIFID II

The Central Bank recently completed a themed review to examine the suitability processes of investment firms which may be of interest to Investment Managers subject to MIFID. The review focused on the information-gathering phase of the suitability process and the firms were assessed for compliance with the ESMA Guidelines of the MiFID suitability requirements.

The majority of inspected firms failed to demonstrate full compliance with the Guidelines. The review found that:

- Firms could not demonstrate that the documented suitability policies and procedures were implemented in practice.
- Client take-on application forms did not contain specific fields for the collection of required information and/or were found to be incomplete i.e. fields left blank.
- Not all firms could demonstrate that they had effective governance structures and appropriate tools to successfully implement and assess suitability. A number of firms relied on client self-assessment of knowledge, experience and financial situation and failed to counterbalance self-assessment with an independent objective assessment.

- Dependencies on basic I.T. systems for the management of suitability processes increased the likelihood of human error and did not facilitate second line controls carrying out monitoring.
- Governance structures for the identification and treatment of vulnerable clients were absent or ineffective.

MiFID II Preparedness

With less than five months remaining until MiFID II implementation, the review provided an opportunity to observe how firms were progressing with the significant challenge of preparing for MiFID II. The MiFID II regulations apply significant changes to the suitability requirements by placing a number of the Guidelines on a statutory footing and by introducing a number of new requirements. The review revealed that best in class firms have completed detailed gap analyses and are in the process of implementing MiFID II.

The Central Bank requires firms to:

1. Review its suitability framework to ensure it meets and implements the relevant requirements and the Guidelines;
2. Take all necessary steps to ensure that the suitability policies and procedures are fully embedded within the firm; and
3. Consider all good practices listed in Appendix 1 of the CBI letter against the firm's suitability framework and procedures. This could form part of the MiFID II implementation project.

UCITS

14. Amendments to UCITS Regulations become effective

On 27 July 2017 new amendments to the UCITS Regulations were signed in to effect. The regulation sets out consequential amendments following the implementation of UCITS V, as well as some technical changes (summarised below), they are of particular value in clarifying some of the requirements which derive from CP86 in relation to the Location Rule and Record Retrievability Rule.

The location rule has been changed to expand the above requirements for residency in the EEA to include "or such other country as the Bank may, taking into account criteria regarding effective supervision, determine". The Central Bank will thus have more flexibility to determine that countries which are outside the EEA meet the necessary requirements.

The Record Retrievability Rule.is incorporated as a new Regulation and will apply from 1 July 2018.

Other miscellaneous amendments include:

- Disclosure on long/short positions held by a UCITS - the CBI UCITS Regulations had introduced a requirement for a UCITS to disclose in its prospectus whether the UCITS intended taking long or short positions or both and the percentage of assets that it anticipated would be invested in long and short positions respectively. This has been revised to provide that a UCITS can now either:
    - disclose the anticipated percentage (relative to the NAV) of the maximum value of long positions and the maximum of the absolute values of the short positions; or
    - disclose the anticipated maximum of the ratio of the value of the long positions to the absolute value of the short positions
- Disclosure of costs relating to EPM techniques and instruments - the CBI UCITS Regulations had previously imposed an obligation to contain certain disclosures in the prospectus relating to operational costs and fees which could be deducted from any revenue generated by the UCITS from either EPM techniques (i.e. stock-lending/repos/reverse repo arrangements) or EPM instruments (i.e. financial derivative instruments). The Amending Regulations clarify that this disclosure obligation relates to EPM techniques only, bringing the CBI UCITS Regulations in line with the ESMA Guidelines on ETFS and other UCITS issues.
- Imposing the requirements relating to establishment of a wholly owned subsidiary of a UCITS on a statutory basis
- Permitting the periodic reports of a UCITS to disclose open financial derivative positions on a condensed basis where the volume of these positions is high
- Revising the rules relating to the minimum capital requirements applicable to certain categories of depositaries authorised by the Central Bank
- Making certain other amendments relating to depositary obligations which were inconsistent with the provisions of UCITS V

15. Central Bank Publishes 19th Edition of the UCITS Q&A Document

On 4 August 2017, the Central Bank published the 19th Edition of its Central Bank UCITS Q&A. The most recent publication includes the following additions;

Q 1079 – 1083 relate to the Central Bank UCITS (Amendment) Regulations 2017 and concern; initial capital requirement for depositary; how one computes half of a board of directors where the number of directors is uneven; meaning of reverse leverage; and where cash booked in accounts and held as ancillary liquidity may be held.

Q 1084 relates to the governing law of management company agreements.

16. Central Bank amends UCITS Financial Derivative Instruments and Efficient Portfolio Management Guidance

On the 4 August 2017, the Central Bank amended the UCITS Financial Derivative Instruments and Efficient Portfolio Management Guidance. This now includes an additional provision on disclosure requirements for financial derivative instrument in periodic reports and which is located on page 32 of the Guidance.