

Bridge Consulting Regulatory Update

Q3 2018

Compliance | Risk | Governance Services | Consulting



Regulatory Update

				
Regulatory Update	04 September 2018; Central Bank communicated findings from their Thematic Review of Performance Fees	05 July 2018; Central Bank published a notice regarding Implementation of Fund Management Companies Guidance	Central Bank Focus on Diversity	EU Money Market Fund Regulation (MMFR)
Key matters/issues arising	Issues highlighted and requiring investigation included; calculation of fees based on GAV, inappropriate benchmarks, payment of fees on basis of market movements, unclear disclosure of benchmarks etc.	From 01 July 2018, CBI supervisors will assess how the guidance has been “implemented and embedded” in the organisations with specific emphasis on “resources & organisational structure”. This will be exercised through supervisory engagements with firms.	High profile individuals at the CBI (including Ed Sibley & Derville Rowland) have recently spoken at public engagements regarding the need for diversity at all levels of financial services.	Eligible assets; portfolio diversification; liquidity; credit quality assessment; risk management valuation; an escalation process for application of liquidity fees and gating mechanisms in the case of the Public Debt CNAV and LVNAV MMF; external support disclosures and regulatory reporting.
Key Dates	Chairman of the Board is required to respond to the CBI by 30 Nov 2018 confirming whether; changes to methodologies or prospectus disclosures were identified or any instances of improper payment and steps being taken to remedy.	Ongoing – we advise that Organisational Effectiveness Directors conduct an initial “scoping” meeting with their governance service provider to frame the role and record same. Bridge Consulting have a detailed OE Framework which can assist in this process.	Ongoing - CBI in association with Trinity College Dublin are hosting a conference exploring Culture, Diversity & the Way Forward for Corporate Governance in Ireland on 25 October 2018. This is envisaged to be an ongoing and evolving area of focus.	Applies from 21 July 2018. Existing MMFs benefit from an 18-month transitional period and are required to comply by 21 January 2019.

Central Bank Thematic Review on Performance Fees



Regulatory Update

04 September 2018

Central Bank communicated findings from a Thematic Review of Performance Fees

Identified 350 UCITS that accrued performance fees in 2017 and sampled c. 30% of these

Key Matters/Issues Arising

10% of the sample of sub-funds displayed instances of non-compliance with the CBI performance fees guidance

Guidance was not applied in a consistent and comprehensive manner

Findings included;

1. Performance fees calculated based on GNAV
2. Calculation of outperformance using an irrelevant benchmark.
3. Payment of fees on basis of market movements not IM performance.
4. Unclear disclosure of which benchmark was used to calculate performance.

Actions Required

Chairman of the Board is required to respond to the CBI findings no later than 30 November 2018 confirming that a review has been conducted and whether in the course of this review;

- any required changes to existing methodologies have been identified;
- any required changes to prospectus disclosure have been identified;
- any instances of improper payment of performance fee have been identified; and
- actions are being taken to remedy the above.

Implementation on Fund Management Companies Guidance



Regulatory Update

01 July 2018

CP86 Fund Management Companies Guidance came into effect

05 July 2018 Central Bank published a notice regarding the implementation of CP86.

Key Matters/Issues Arising

The Central Bank specifically detailed the role of the Organisational Effectiveness Director.

Central Bank Supervisors, through supervisory engagements will assess how the new CP86 requirements are implemented and embedded in an organisation.

“... Central Bank will focus on the assessment work performed by the Organisational Effectiveness role holder and, in particular, how the board of the Fund Management Company have implemented any proposals to improve organisational effectiveness.”

Actions Required

We advise a “scoping” meeting between OED and the governance service provider to discuss approach to the role. Bridge Consulting have a detailed OE Framework which can assist in this process.

An annual written report should be provided to the Board from the OED noting observations related to organisational effectiveness and decision making and suggested improvements to same.

Organisational Effectiveness Directors should be prepared for CBI engagement over the next 12-18 months.

Central Bank Focus on Diversity



Regulatory Update

Q2 & Q3 2018

Central Bank Focus on Diversity,
Behaviour and Culture

Renewed focus on lack of diversity at all
levels of the industry.

Key Matters/Issues Arising

Following recent public speaking engagements by a number of high profile Central Bank employees, including Ed Sibley and Derville Rowland; it has become increasingly evident that the regulator has turned its focus to diversity in the financial services industry.

Actions Required

CBI in association with Trinity College Dublin are hosting a conference exploring Culture, Diversity & the Way Forward for Corporate Governance in Ireland on 25 October 2018.

Bridge will provide further updates on this area and any “hot topics” from this conference going forward.

This is envisaged to be an ongoing evolving area of focus.

EU Money Market Fund Regulation



Regulatory Update

21 July 2018

21 January 2018 (applies to existing money market funds)

Implementation of new EU Money Market Fund Regulation

Key Matters/Issues Arising

MMF may be established as;

- a Public Debt CNAV MMF;
- a Low Volatility NAV (LVNAV) MMF;
- or
- a variable NAV (VNAV) MMF.

New disclosure requirements related to;

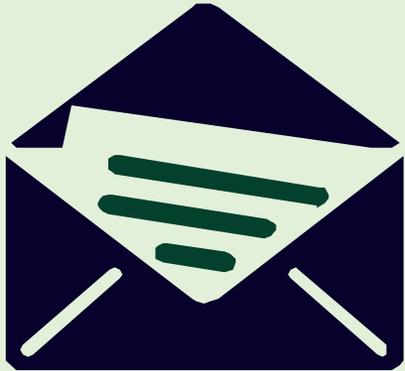
- Eligible assets;
- portfolio diversification;
 - liquidity;
- credit quality assessment;
- risk management valuation;
- escalation process for application of liquidity fees and gating mechanisms (Public Debt CNAV and LVNAV MMF);
 - external support;
- disclosures and regulatory reporting.

Actions Required

The regulatory regime applies from 21 July 2018 for all new Money Market Fund applications.

Existing MMFs benefit from an 18-month transitional period and are required to comply by 21 January 2019.

Talking Points



25 May 2018; CBI issued a communication regarding submitting applications as a Designated Person (PCF – 39).

Requiring that new detail be added to the “Proposer Declaration” i.e. Section 12.6 of IQ;

1. Managerial Function (s) the Designated Person is seeking appointment to?
2. Confirmation of proposed time commitment in days per annum the Designated Person will provide to the respective Managerial Function(s).

Recent Management Company applications to the Central Bank of Ireland (the "CBI") for UCITS Management Companies ("ManCos") saw significant scrutiny by the CBI; focusing heavily on Designated Persons ("DP") and Organisational Effectiveness Directors' time commitments.



AUM of the funds appears to be a key driver in requiring substance from the DP's. CBI has also commented on different factors as potentially having an impact on time commitments.

“How much time, how many people are needed to do this depends of course on the nature, scale and complexity of the fund or funds being managed. There is no right number; you always have to look at the facts of the case.”

Martina Kelly on the Organisational Effectiveness role; “It is intended to develop the Central Bank’s guidance in this area particularly by taking into account the experiences of those who carry out this role and by engaging with industry experts.”

Conclusion: Recent public speaking engagements, CBI publications as well as industry anecdotes has led to industry rumours that the Central Bank has greatly increased their expectations in terms of Designated Persons’ and Organisational Effectiveness Directors’ time commitments but there is no certainty yet as to what exactly the CBI will require.

Recent CBI direction on time commitment requirements for larger Management Company applications

6 days per annum on top of NED commitment (0.5 days per month)

OE Director

Investment Manager

Minimum 52 days per annum (1 day per week)

52 days per annum on top of NED commitment (1 day per week)

Fund Risk Mgmt

Distribution

16 days per annum on top of NED commitment (1.3 days per month)

28 days per annum on top of NED commitment (2.3 days per month)

Regulatory Compliance

Op Risk Mgmt

52 days per annum on top of NED commitment (1 day per week)

16 days per annum on top of NED commitment (1.3 days per month)

Capital & Financial Mgmt

Talking Points (cont'd)

External resources	<p>Implementing CP86 – Speech by Martina Kelly; Head of Markets Policy Division at KPMG event</p>	<p>“...we will carry out a more detailed assessment on how existing firms have implemented CP86 in 2019. That will influence our position on whether further changes or additional guidance is needed. It would of course be wise for fund management companies to be taking into consideration what is required of new entrants as they make their assessments and prepare for expected visits from the Central Bank in the future. The organisational effectiveness role holder should also be carrying out a detailed review of the arrangements and satisfying him or herself that all obligations of the company are being met by the designated persons on a day to day basis.”</p> <p>Re OE role; “It is intended to develop the Central Bank’s guidance in this area particularly by taking into account the experiences of those who carry out this role and by engaging with industry experts. “</p>	<p>link</p>
	<p>Taking stock of the past and insights on the future of the asset management sector – Speech by Michael Hodson; Director of Asset Management Division</p>	<p>“Prior to 1 July, our supervisory focus centred on firm preparedness and now, in line with other rule changes introduced, the Central Bank will turn its attention to assessing how firms implemented and embedded the key CP86 requirements into their arrangements. We will do this via individual firm engagements and our supervisors will carry out a bigger piece of work across the industry in 2019.”</p>	<p>link</p>
	<p>Fit for the future: some current issues in the regulation of Irish investment funds – Speech by Gerry Cross, Director of Policy and Risk</p>	<p>“...CP86 came fully into effect on 1 July 2018. The rules and guidance introduced as a result of CP86 make clear that the running of a fund management company is not something that can be undertaken without dedicating the appropriate level of resources to that task. They make clear that the role of the directors and the role of designated persons, those tasked with the day-to-day running of the fund management company, are separate and distinct roles.... Designated persons are responsible for the management of the company on an ongoing basis. How much time, how many people are needed to do this depends of course on the nature, scale and complexity of the fund or funds being managed. There is no right number; you always have to look at the facts of the case.”</p>	<p>link</p>
	<p>The need for resilience in the face of disruption: Regulatory expectations in the digital world – Speech by Deputy Governor Ed Sibley</p>	<p>Financial services firms must improve in getting the basics right in their IT infrastructures and governance</p> <p>Mr Sibley raised concerns “about the many findings in our work that relate to the failings of boards and senior management to understand and appreciate the significance of the IT and operational risks their firms face.” He noted that “Senior management and boards of financial services firms need to own these critical risks and build resilience in their firms to be able to endure and survive operational or technology-related shocks.”</p>	<p>link</p>

Regulatory Developments

Implementation Deadline	Regulatory Event	Regulatory Update/Actions Required
30 November 2018	Filing of annual accounts with Companies Registration Office	Confirm where responsibility for filing of annual accounts sits – we see that this generally is assigned to the Company Secretary to file. Agree with auditors as to whether a full Schedule of Investments will be filed or an abridged version.
Probable Q4 2018	4 th AML Directive	Full text of CJA Bill, 2018 published April 2018 giving effect to amend 2010 and 2013 acts as well as giving effect to certain provisions. The Bill remains in the first stage of the approval process.
2020	5 th AML Directive	14 May 2018 European Council adopted the 5 th Money Laundering Directive strengthening EU rules to prevent money laundering and terrorist financing.
Ongoing	Feedback Statement on Discussion Paper 6 – Exchange Traded Funds	September 2018; the CBI published their response to the DP 6 process. Industry responses provided good insight into the design features, dealing mechanisms and operating models in global ETF environment today, and implications these may have for ETFs, particularly in stressed market conditions. Feedback will inform the CBI's approach in the ongoing debates in European and international policy forums.
Ongoing	Submission of Beneficial Ownership Register to the CRO	August 2018, the CRO published a notice stating it was drafting legislation to establish a central beneficial ownership register and that the process is in the advanced stages and is to be concluded by the Department of Finance shortly.