

Bridge Consulting Regulatory Update

Q 1 2019

Compliance | Risk | Governance Services | Consulting



Regulatory Update

				
Regulatory Update	08 October 2018; Central Bank issued revised guidance on use of financial indices by UCITS	19 November 2018; Central Bank issued a Discussion Paper on Outsourcing	19 December 2018; Central Bank issued communication to Administrators and Management Companies as part of Brexit preparedness regarding enhanced monitoring of investment fund liquidity	18 January 2019; Ed Sibley, Deputy Governor of Central Bank of Ireland advised that firms can plan for Brexit on the basis of a Memorandum of Understanding being in place with the FCA by 29 March 2019
Key matters/issues arising	CBI introduced a “self-certification” process to replace CBI prior approval of non-diversified indices. The new process also includes a requirement to maintain “sufficient documentary evidence” supporting index permissibility to be immediately retrievable by the regulator.	A number of good practices were observed, but significant deficiencies identified in board awareness and understanding of the extent of reliance within their firm on offshore service providers. Major weaknesses highlighted regarding governance, risk management controls and processes.	Central Bank requested immediate notification be submitted directly where; -daily net reds are -5% or more of NAV; -cumulative daily net reds over the preceding 5 business days are -10% or more of NAV (aggregate); -liquidity tools have been activated including suspensions and gating.	“I am confident that the necessary MOUs will be in place to facilitate the continued high level of cooperation between UK and Europe. It is reasonable for firms to plan on the basis that MOUs will be in place by 29/03. Firms that delegate portfolio management to the UK can have sufficient confidence that this will continue to be allowed post 29/03.”
Key Dates/Actions	08 February 2018 – responses to CBI Index Quality Assessment due Ongoing - Investment Manager required to maintain evidence of initial and periodic checks with same immediately available to the CBI should they conduct a periodic assessment of randomly selected indices which will involve a request for documentary evidence.	Ongoing – The feedback process ends 18 January 2019 and the Central bank will review all responses. Bridge, as part of the Supervision of Delegates process, request details of any outsourcing arrangements in place at the delegates and provide details of this review in the annual report.	Ongoing – we advise that Directors seek confirmation from the Administrator that this correspondence was received from the CBI and has been actioned accordingly.	Ongoing – At the date of this update, such an agreement is not in place, however, based on the speech by the deputy governor; it is reasonable to assume that delegation of investment management functions by the Company to a UK based Investment Manager will continue in a hard-Brexit scenario.

Revised Guidance on Financial Indices



Regulatory Update

08 October 2018

Central Bank issued revised guidance on the use of financial indices by UCITS.

Implementation of new “self-certification” where a UCITS seeks to gain exposure to an index which is not sufficiently diversified per UCITS Regulation 71.

01 February 2019

CBI selected a Financial Index per the updated guidance for a random “Quality Assessment” seeking details on rationale for selection of the benchmark, calculation methodology, fees and construction methodology.

Key Matters/Issues Arising

Where an index is not sufficiently diversified, the Responsible Person is no longer required to seek prior approval from the CBI and instead will send a self-certification.

“Sufficient documentary evidence” must be maintained supporting index permissibility to be immediately retrievable by the Central Bank at any time.

Period assessments of “randomly selected indices” will be conducted which will include request for documentary evidence.

Certification is also required in cases where index weightings fluctuate due to market movements.

Actions Required

The Investment Manager is required to

- implement a process whereby documentary evidence is maintained at initial exposure to the index;

- periodic reviews conducted to ensure previously diversified indices have not undergone weighting fluctuations due to market movements;

Governance service providers should update their monthly Investment Manager reports to include confirmation that the above checks have been conducted.

08 February 2019
Responses to index assessment due.

Central Bank Discussion Paper on Outsourcing



Regulatory Update

19 November 2018

Central Bank issued a discussion paper following industry consultation on Outsourcing.

Key Matters/Issues Arising

Significant deficiencies in board awareness and understanding of the extent of the reliance within their firms on outsourcing.

Highlighted major weaknesses with regard to the related governance and risk management controls and processes in place across all financial sectors.

Given industry wide findings, the regulator suggested outsourcing risk was not considered a core priority within many firms.

Actions Required

Central Bank expects that all regulated firms take appropriate action to address the issues outlined in the paper and to be in a position to evidence same to the regulator if requested.

Supervision of Delegates includes a review of any outsourcing arrangements, BCP testing and take back testing – this will be included in the summary report findings and presented to the board for review.

Liquidity monitoring – Brexit Preparedness



Regulatory Update

19 December 2019

As part of the Central Bank of Ireland's Brexit preparedness the regulator advised that they wish to increase the monitoring of investment fund liquidity.

To facilitate this a communication was issued to Administrators and Management Companies requesting specific information be submitted directly to them in a prescribed template, from Wednesday 2nd January 2019

Key Matters/Issues Arising

Provision of the following information for individual Irish domiciled funds (at sub-fund level if part of an umbrella);

- immediate notification where daily net redemptions are negative 5% or more of NAV at an aggregate deals level;
- immediate notification where cumulative daily net redemptions over the preceding 5 business days are negative 10% or more of NAV at an aggregate deals level;
- immediate notification and information where liquidity tools have been activated including suspensions and gating.

Actions Required

Confirmation required from the administrator that it is their intention to meet this request and have done so since 02 January 2019.

Investment Manager Delegation – Brexit Preparedness



Regulatory Update

18 January 2019

Ed Sibley, Deputy Governor of Central Bank of Ireland at speaking engagement for the Banking & Payments Federation of Ireland advised that firms may plan on the basis a Memorandum of Understanding (MOU) will be in place between European Authorities and the FCA post 29 March 2019.

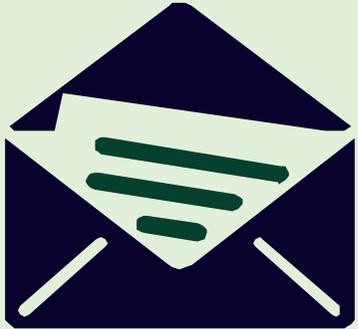
Key Matters/Issues Arising

“From a regulatory perspective, it is desirable, given the size and role of London as a financial centre, that some form of sustainable link between the EU and the UK is found. As I have already touched on, I am confident that the necessary MOUs will be in place to facilitate the continued high level of cooperation between UK and European authorities, including on a bilateral basis. It is reasonable for firms to plan on the basis that MOUs will be in place by 29th March. Firms that delegate portfolio management to the UK can have sufficient confidence that this will continue to be allowed post 29th March.”

Actions Required

This memorandum has not been agreed at the time of issuing this update, but it is reasonable to assume that delegation of investment management functions to a UK based Investment Manager can continue in a hard-Brexit scenario.

Talking Points



07 December 2018 – Central Bank of Ireland issues correspondence to UK managed AIFMs to confirm the appointment of an alternative manager in response to loss of EU AIFMD passport of the current UK manager.

19 December 2018 – Central Bank issues a communication to all Administrators and Fund Managers detailing enhanced liquidity reporting as part of Brexit preparedness commencing 2 January 2019.

22 January 2019 – CBI corresponds with Irish registered funds advising of the FCA’s Temporary Permission Regime and the commencement of registrations of same.

23 January 2019 – UK AIFMs are advised by CBI that change of service provider applications (COSPs) must be submitted to the regulator no later than 01 March 2019 to ensure processing before 29 March 2019.

ED Sibley on cooperation agreements with the UK; “I am confident that the necessary MOUs will be in place to facilitate the continued high level of cooperation between UK and European authorities, including on a bilateral basis. It is reasonable for firms to plan on the basis that MOUs will be in place by 29th March. Firms that delegate portfolio management to the UK can have sufficient confidence that this will continue to be allowed post 29th March.”



GDPR: The Data Protection Commission has confirmed that in the event of a hard Brexit; there will be a window of time where the UK is deemed a “third country” under GDPR and so will not be considered as having an “equivalent data protection regime”.

To safeguard against this and to permit the uninterrupted transference of data; fund Data Protection Policies require an amendment to include a “standard contractual clause” referring to the transference of data outside the EEA.

Michael Hodson on asset management after Brexit; “[Brexit] would also present the scenario whereby Irish firms may not be able to passport their services to clients or customers in the UK.....The onus is on firms to notify the FCA by 28th March 2019 if they wish to enter the temporary permissions regime.

Conclusion: “Nothing is agreed until everything is agreed”, but the industry must be mindful that we progress closer to the “Brexit” date of 29 March 2019 and the risk of hard Brexit scenario remains. With this in mind it is prudent for directors to seek a “Brexit memo” from legal advisors outlining the likely implications of such a scenario and what immediate actions should be taken.

Recent CBI and industry communication on Brexit scenarios and preparation Key Dates

Deadline for return to CBI of Brexit planning query sent to UK managed AIFMs

21
December
2018

02 January
2019

Requirement for enhanced liquidity reporting to the CBI takes effect

MPs set to vote on Teresa May’s “Plan B” which provides mandate to renegotiate with Brussels

29 January
2019

01 March
2019

Deadline for return of “Change of Service Provider Applications” (COSPs) to the CBI for UK managed AIFMs

Last meeting of EU member states in Brussels before Brexit – withdrawal agreement expected to be ratified

March
2019

28 March
2019

Window for notifications under FAC Temporary Permissions Regime closes

Britain will exit the European Union

29 March
2019

Talking Points (cont'd)

External resources	<p>Safety and soundness – Strategic priorities for the next three years– Speech by Deputy Governor of Central Bank of Ireland Ed Sibley</p>	<p>“...while Brexit will undoubtedly be damaging for Ireland, difficult for the financial system and its consumers, the most immediate and material ‘cliff edge’ financial stability risks arising from Brexit have been largely mitigated.</p> <p>From a financial regulation perspective, our work has sought to ensure:</p> <ul style="list-style-type: none">• the financial system is resilient enough for a hard Brexit not to cause significant financial stability risks;• that financial services providers are discharging their responsibilities by taking all necessary steps to protect their businesses and customers to the risk of a hard Brexit;• that risks to consumers are mitigated to the greatest extent possible; and• we are delivering a proportionate, robust, efficient and effective authorisation process in line with European regulatory norms, for those firms seeking authorisation in Ireland as a result of Brexit.	link
	<p>Brexit and the evolving landscape of the asset management sector– Speech by Michael Hodson, Director of Asset Management & Investment Banking</p>	<p>“(re service disruption and standard agreements in the event of a hard Brexit)... the Central Bank’s work in this area will not relent so long as the risk of a no deal scenario and no transition period remains. However it is equally, if not more important, that you in industry play your part.</p> <p>At a minimum, we have required firms to consider and address the common sectoral risks, in addition to any other risks already identified by the individual firms. As well as analysing contingency plans, supervisors continue to work with firms to understand the risks arising from continued political developments. To summarise, this ongoing communication between regulators and regulated entities will be critical as we navigate the risks associated with Brexit.</p>	link
	<p>Asset Management after Brexit: Responding to the New Reality – Speech by Michael Hodson, Director of Asset Management & Investment Banking</p>	<p>“As many of you will know, ESMA is also working on the development of guidelines on liquidity stress testing for all funds, both UCITS and AIFs, taking into account the recommendations from the ESRB on this topic. We expect that the consultation paper will be published by ESMA in the first quarter of 2019.</p> <p>..... a number of firms have already received approval for authorisation and we expect that a sizeable number will continue to be approved in the coming weeks. My message to those firms who are currently in the authorisation process with us is to continue to actively engage with us to ensure that you are authorised by March 2019.”</p>	link

Regulatory Developments

Implementation Deadline	Regulatory Event	Regulatory Update/Actions Required
January 2019	Securitisation Regulation	EU Securitisation Regulation applies from January 2019 which reforms the EU securitisation market and introduces a framework for "simple, transparent and standardised" securitisation.
Probable 2019	Revised UCITS Regulations	Central Bank expected to represent a consolidation of all Central Bank UCITS Regulations to date and take account of regulatory and technical updates which were consulted on in 2018.
Probable Q4 2019	4 th AML Directive	Criminal Justice Act, 2018 signed into law 14 November 2018. The Central Bank published a consultation paper December 21, 2018 and responses are welcome until April 2019.
2020	5 th AML Directive	19 June 2018, 5 th Money Laundering Directive published in the Official Journal of the EU. Member states have until 2020 to set up centralised ownership registers (January & March 2020) and automated mechanisms (September 2020).
Probable 2020	Investment Firms Directive/Regulation	Announced 7 January 2019 that COREPER endorsed a new regulatory framework for investment firms designed to make "the rules applicable to investment firms more proportionate and more appropriate to the level of risk which they take". Under the new framework, many investment firms would no longer be subject to rules originally designed for credit institutions (the largest and most systemic investment firms would however remain subject to the existing prudential framework).

Appendix

Resources

Bridge resources	23rd Edition of UCITS Q&A	Note circulated on UCITS Q&A	link
	Updates to UCITS Guidance on Financial Indices	Note circulated on guidance update	link
	Brexit implications on GDPR	Note circulated on GDPR potential updates required	link
External resources	Outsourcing	Discussion Paper 8 – Outsourcing Findings and Issues for Discussion	link
	Derville Rowland speech	Speech noting CP86 requirements and supervisory engagements to take place in 2019	link
	Financial Indices	Revised guidance on use of financial indices by UCITS	link

CBI Index Quality Assessment

Index Quality Assessment

01 February 2019, Central Bank of Ireland notified a selection of Investment Managers of a Quality Assessment to be conducted on a randomly chosen Index.

CBI Guidance on UCITS Financial Indices provides that regulator will periodically conduct quality assessments of randomly selected financial indices which have been certified and are used by UCITS to ensure they comply with relevant regulatory requirements and guidance.

All necessary documentation is to be returned to aifauthorisations@centralbank.ie no later than 08 February 2019.

The Responsible Person must **at a minimum** provide details no later than **08 February 2019** confirming the below. Any technical and marketing documents produced by the index sponsor should also be included;

The rationale as to how the Index achieves the objective of being a benchmark for the market to which it refers;

The methodology used to construct the Index*;

Information on index constituents and their current as well as historic weights;

Details as to how the Index calculation methodology is verified; and

Information regarding fees embedded in the Index.

*which should be adequately described and include the data on constituent selection criteria, constituent price collection procedure, asset allocation rules and guidelines for altering and re-balancing the Index