

Bridge Consulting Regulatory Update

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Elma Boland
Compliance | Risk | Governance Services | Consulting



Regulatory Update

				
Regulatory Update	01 January 2019, new Securitisation Regulation came into effect	08 April 2019, Central Bank of Ireland “Dear CEO” letter on Fitness & Probity Standards	Securities Financing Transactions Regulation Implementing Regulation entered into effect 11 April 2019	2019 - Central Bank Index Hugging Review
Key matters/issues arising	Securitisation Regulation becomes subject to major overhaul; bringing a large number of entities previously unregulated into the regulation scope. All non-EU securitisations will need to comply if being sold in the EU.	Central Bank highlighted a lack of “general awareness” of Firms' obligation regarding Fitness & Probity standards. Highlighted significant compliance obligations and main areas where compliance has been found lacking.	Imposes reporting obligations on counterparties to report in-scope transactions to a trade repository (similar to EMIR reporting obligations).	Derville Rowland confirmed at speaking engagement that the Central Bank has commenced analysis of 2,000 plus Irish domiciled UCITS funds reporting to be “actively managed” followed by a “desktop” review of selected funds.
Key Dates/Actions	01 January 2019 – regulation comes into effect. However, technical standards and guidelines remain unpublished, making implementation of the regime an ever changing landscape.	Ongoing – There is no request for immediate or formal response to the CBI. However, we recommend the completion of a “Gap Analysis” ensuring all relevant F&P documentation is retained on file by the parties with responsibility for same, a clear Fitness & Probity policy is maintained and periodic legal searches conducted.	11 October 2020 – Effective date of reporting obligation for UCITS funds, AIFs, AIFM and UCITS Management Companies.	Ongoing – Funds selected for desktop review have been contacted and requested details provided. It is anticipated that following on from completion of this; the Central Bank are likely to issue an industry response on this themed review.

Securitisation Regulation



Regulatory Update

01 January 2019

Overhaul of Securitisation Regulation which brings a number of entities previously out of scope, within the remit of the regulations and introduces.

Imposes ban on re-securitisation and securitising self certified residential mortgages loans.

EU securitisation rules now become applicable to entities with non-EU investors.

Key elements of the regime are not yet finalised creating a high degree of compliance uncertainty.

Key Matters/Issues Arising

Recast provisions extending the applicability of the regulations not just to banks, insurers and fund managers, but also including all institutional investors including UCITS and pension funds in the scope.

Introduced concept of “simple, transparent and standardised” (“STS”) securitisation which receive more benign treatment.

Regulation is broken down into three main categories;

1. Risk Retention
2. Transparency
3. Due Diligence

Actions Required

In anticipation of regulatory technical standards (“RTS”) for due diligence, it is advised that existing RTS under CRR are followed (this is only applicable to plan “vanilla” transactions – more complex need to wait for RTS).

Many aspects of the regulation related to Transparency don’t require further clarification by RTS; failure to comply while awaiting RTS is not advised.

It is recommended that applicable entities have a written policy in place regarding their due diligence obligations under the regulation.

Fitness & Probity Standards



Regulatory Update

08 April 2019

Central Bank issued an industry wide “Dear CEO” letter reminding boards of the significant obligations placed on all Regulated Financial Service Providers under the Fitness and Probity regime.

“It is important that individuals who hold CF appointments to these entities know and understand their regulatory obligations, comply with them and are able to demonstrate compliance. The regime is central to the Central Bank’s role in regulating the investment funds sector and individuals who work in this sector must meet the highest standards of competence, integrity and honesty.”

Key Matters/Issues Arising

The Firm is deemed the first line of responsibility under the Fitness and Probity Regime and they are obligated to ensure people subject to the regime are fit and proper.

This responsibility does not end following the hiring of staff; fitness & probity must be assessed on an ongoing basis.

Firms should be in a position to demonstrate how the issues raised in the letter have been considered, and to explain and evidence any remedial actions taken.

Actions Required

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

The CEO, together with the board is expected to review the Firm’s fitness and probity policies, procedures and practices and address any shortcomings.

Bridge recommend the completion of a “gap analysis” to address the above point, as well as drafting a “Fitness & Probity Policy” and marinating a process which includes periodic “repapering” of relevant staff.

Securities Financing Transactions Regulation (SFTR)



Regulatory Update

11 April 2019

Implementing Regulation of the SFTR came into effect detailing dates for compliance with relevant reporting obligations.

The reporting obligation relates to SFT transactions (defined under the SFTR):

- repurchases and reverse repurchase transactions;
- securities lending/commodities lending transactions
- securities borrowing/commodities borrowing transactions;
- margin lending transactions; and
- “buy-sell back” transactions and “sell-buy back transactions

Key Matters/Issues Arising

Intention of SFTR is to improve the transparency of securities financing markets. This enables regulators and investors to monitor the risk in the financial system arising from the use of securities financing transactions.

The regulation imposes obligations on all relevant counterparties to report in-scope transactions to a trade repository. This is similar to reporting obligations imposed on counterparties who enter into certain derivative contracts under the EMIR regime.

Actions Required

Funds and managers are expected to implement appropriate operational arrangements and delegation agreements required to comply with the reporting obligations.

The reporting format for SFTs has been made consistent with that already prescribed for the reporting under EMIR.

Central Bank/ESMA Index Hugging Review



Regulatory Update

04 December 2018

Derville Rowland, Director General of Central Bank of Ireland at speaking engagement for the EY “Funds Forum” advised that work was ongoing at ESMA and national level to ensure investors are not misled or misinformed and this included the issue of closet indexing.

29 March 2019

Following on from this work; ESMA released a revised UCITS Q&A on UCITS detailing enhanced disclosure obligations on UCITS ManCo’s re benchmarks and past performance.

Key Matters/Issues Arising

The UCITS’ KIID must include a bar indicating performance.

The objectives and investment policy section of the KIID must clearly state the UCITS either has an index tracking objective or allows for discretionary choices. “Explicitly using the terms ‘active’ or ‘actively managed...”

Per the requirement that UCITS KIIDS are; “‘fair, clear and not misleading”, UCITS management companies must ensure performance disclosure in the KIID is consistent with all offering documentation and marketing material, including the prospectus.

Actions Required

UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of the Q&A.

Provided a UCITS has no reason to update the KIID in the interim, these changes can be incorporated at the next annual update, i.e. February 2020.

All new UCITS, new share classes, or KIID’s requiring updates following material changes in ongoing charges or SRRI calculations should comply with these obligations **immediately**.

Talking Points

External resources	<p>The Central Bank has begun analysis on 2000-plus Irish domiciled UCITS funds that report to be actively managed – Speech by Director General Derville Rowland</p>	<p>“We are keen to ensure investors are not misled or misinformed about their investments in Irish domiciled funds. That includes the issue of closet indexing. Work is ongoing at ESMA level as well as at national level. The Central Bank has begun analysis on 2,000-plus Irish domiciled UCITS funds that report to be actively managed. It is a key priority for the Central Bank to ensure that investors are not disadvantaged by funds operating in a manner that is not consistent with the way in which they have presented their objectives, policies and charges in the fund documentation. Having identified outliers, a full desk-based review of the funds documentation such as KIIDs and prospectus as well as their relevant disclosures will be assessed, and we will follow up appropriately.”</p>	link
	<p>Significant obligations placed on all Regulated Financial Service Providers under the Fitness and Probity regime – “Dear CEO” letter from Derville Rowland, Director General Financial Conduct and Ed Sibley, Deputy Governor Prudential Regulation</p>	<p>“The Central Bank believes that there is a lack of general awareness in the industry regarding the scope of the Fitness and Probity Regime.... Firms must ensure people subject to the regime are fit and proper. Further, this responsibility does not end following the hiring of staff; you must ensure that your staff are fit and proper on an on-going basis. Where Firms fall short, the Central Bank will take appropriate action.... The Central Bank, in light of this letter, expects you together with your board to review your Firm’s fitness and probity policies, procedures and practices and address any shortcomings. Firms should be in a position to demonstrate how the issues raised in this letter have been considered, and to explain and evidence any remedial actions taken. “</p>	link
	<p>ESMA UCITS Q&A</p>	<p>“UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of this Q&A. In accordance with Article 79(1) of the UCITS Directive and to ensure fair, clear and not misleading communications, the information disclosed in the UCITS KIID should be consistent with the UCITS’ Investment Objective in the Prospectus.”</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.
2019 (Immediately)	ESMA Revised UCITS Q&A	ESMA revised Q&A on UCITS detailing the disclosure obligations of UCITS management companies relating to benchmarks and past performance in KIID Regulation.
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	Securities Financing Transactions Regulation	Implementation Regulation published providing effective date for reporting obligation of 11 October 2020.
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).