Bridge Consulting Regulatory Update

Q 3 2020

Elma Boland

Compliance | Risk | Governance Services | Consulting

BRIDGE CONSULTING

Regulatory Update

Regulatory Update	May, 2020 ESMA CSA on UCITS Liquidity	2020 Central Bank expectations on time commitments	23 April,2020 ESMA launch consultation paper on draft RTS for ESG disclosures as part of the Sustainable Finance Disclosure Regulation
Key matters/issues arising	Subsequent to Phase 1 of ESMA's Common Supervisory Action on UCITS Liquidity, the Central Bank of Ireland have initiated Phase 2, involving the completion of a detailed 44 point questionnaire to be filed via the Online Reporting System.	Following on from further increases to the time commitments and substance requirements of UCITS Management Companies, AIFM's and SuperManCo's, the Central Bank of Ireland have begun to impose increased time requirements on Self-Managed Investment Companies; roles previously requiring a commitment of 12 days have seen a sharp increase to 52 days.	ESMA release joint Consultation Paper (with the EBA and EIOPA) on draft Regulatory Technical Standards (RTS) seeking input on the content, methodology and presentation of ESG disclosures that are required under the EU regulation on sustainability-related disclosures in the financial services sector (SFDR).
Key Dates/Actions	Ongoing – A random sample of companies have been selected for the Phase 2 review. Those selected have been allowed a two week turnaround time to submit their completed questionnaire.	Ongoing – firms are reminded of the Central Bank of Ireland's move towards "boots on the ground" for any fund management company authorised in Ireland. Boards of self-managed companies and proprietary management companies without significant substance are advised to consider appropriate options available.	01 Sept 2020 – Responses sought on the consultation 30 Dec 2020 – RTS due to be finalised 10 March 2021 – RTS and SFDR scheduled to apply.

ESMA CSA Liquidity Analysis

Regulatory Update

May 2020

Subsequent to the March submission of a liquidity questionnaire by all UCITS Management Companies; the Central Bank of Ireland initiated Phase 2 of ESMA's CSA, selecting a random sample of UCITS Fund Management Companies.

Phase 2 involves the completion of a second more detailed questionnaire on the liquidity management framework of the company.

The questions posed have been drafted by ESMA and agreed between all National Competent Authorities.

Key Matters/Issues Arising

The questionnaire requests responses and supporting documentation on 44 questions spanning the following subjects;

1. Pre Investment Forecast & Analysis of Liquidity;
2. Ongoing alignment of redemption policies and liquidity profiles;
3. Data availability, reliability, sources, screening and processing;
4. Governance and Control Mechanisms;
5. Communication, Key Investor Information; and
6. Covid-19 Supervision.

Actions Required

Ongoing

The completed questionnaire must be filed via the ONR within two weeks of selection for the Phase 2 review.

Phase 3 will involve onsites with the Central Bank of Ireland (conducted remotely in current circumstances). These onsites involve lengthy meetings with the Company's risk management functions.

If selected for Phase 2 or 3 of the CSA, Bridge can assist with the review of responses to the CBI.

Central Bank of Ireland Time Commitments

Regulatory Update

Q2 2020

In the wake of increased applications for the authorisation of Irish Fund Management Companies as a "Brexit contingency"; the Central Bank of Ireland significantly increased their expectations regarding time commitments and substance.

Over the last six months, the Central Bank of Ireland have begun to impose similar substance requirements on legacy Management Companies and Self-Managed Investment Companies.

Key Matters/Issues Arising

The Central Bank of Ireland are insisting on increased substance for any legacy proprietary management companies and self managed companies submitting applications for changes to PCF holders.

Examples of PCF-39 increases;

New SMIC applications – 286 days

Legacy proprietary ManCo – increase from 24 to 260 days

Legacy SMIC with one sub-fund and AUM <100m USD – increased from 12 to 52 days

Actions Required

Proprietary ManCo's and Self Managed Investment Companies are advised to review the staffing arrangements in place.

Consideration should be given to the various options available to meet the expectations of the CBI when it comes to substance and discharge of duties under CP86.

It is clear that the direction of the CBI will have significant impact on the business model and expense ratios of legacy companies – assessment of available options should take into account the due interests of the shareholders of funds under management.

Consultation on Sustainable Finance Disclosure Regulation

Regulatory Update

27 November 2019
European Council and Parliament pass the Sustainable Finance Disclosure Regulation (SFDR) on sustainability-related disclosures in the financial services sector.

23 April 2020
ESMA released a joint Consultation Paper on draft Regulatory Technical Standards (RTS) seeking input on the content, methodology and presentation of ESG disclosures that are required under SFDR.

10 March 2021
Disclosure requirements come into effect.

Key Matters/Issues Arising

SFDR introduces the notion of "principal adverse impact of investment decisions on sustainability factors".

Entity-level disclosure obligations on principal adverse impacts apply to large financial market participants. Draft rules state that those below the threshold of 500 employees should, where they do not consider adverse impacts of investments decisions on sustainability factors, at least explain why not.

RTS refer to disclosure templates – but these are not yet available, with a separate process yet to be established for development.

Actions Required

In advance of implementation, management companies should;

1. Update policies to disclose how sustainability risks are integrated into investment decisions;
2. Update websites with such policies;
3. Revise fund prospectus to demonstrate how sustainability risks are integrated into the investment decisions and potential impact of sustainability risks on the funds' returns;
4. Review remuneration policy.

Bridge are watching this closely and will be working with clients once requirements become clearer.

Talking Points – UCITS Liquidity

07 August 2019, Central Bank of Ireland issue a "Dear CEO" letter to the industry emphasising the "importance of ongoing, effective liquidity management and ensuring compliance with relevant legislative and regulatory obligations for UCITS and AIFs."

It is important that the execution of the liquidity risk management framework for each fund under management is appropriately calibrated to take into account;

- dealing frequency;
- investment strategy;
- portfolio composition; and
- investor profile,

on an ongoing basis.

Responsibility for liquidity risk management, including compliance with all legislative and regulatory obligations in relation to liquidity of each fund under management rests with the board of the fund management company, directors and designated persons.

02 September 2019, ESMA publishes final guidance regarding liquidity stress tests of investment funds – applicable to both Alternative Investment Funds (AIFs) and Undertakings for the Collective Investment in Transferable Securities (UCITS).

The guidelines require managers to stress the fund they manage with such testing to include redemption requests.
The guidance would result in "supervisory convergence" across the EU.

Guidelines become effective 30 September 2020.

31 January 2020; ESMA announce a Common Supervisory Action (CSA) to be undertaken in at least two phases;
Phase 1 will involve the submission of detailed qualitative data to the Central Bank of Ireland to facilitate an assessment of UCITS fund liquidity
Phase 2 would focus on a sample of UCITS managers to carry out more detailed analysis on firms' compliance with their liquidity management obligations and to determine whether policies and procedures were appropriately applied in practice.
(Bridge Consulting have prepared a Regulatory Memo outlining the data and document requests of the Central Bank of Ireland as part of this Phase 2 review.)

Q2 2020; Under the remit of monitoring Brexit preparedness, the CBI in December 2018 introduced enhanced reporting for funds, especially in cases of larger redemptions.

In recent months, in light of market volatility and in line with ESMA's focus on UCITS liquidity, where such significant redemptions are reported by the Administrator, the Central Bank have extended their investigation to include queries on whether;

1. Liquidity management tools (LMT's) were implemented to meet the redemption;
2. Whether the fund's investor base influenced the use of LMT's;
3. Whether the fund encountered difficulties in pricing the assets;
4. Whether there was any further information to bring to the Central Bank's attention.

March 2020*; following on from the submission of the Phase 1 questionnaire, the Central Bank of Ireland continued their analysis of Irish UCITS fund liquidity. This included;*

26 March 2020*; submission of an additional questionnaire detailing the current use of LMTs by all UCITS and AIF Management Companies to monitor the use of LMTs by Firms and the types of LMTs which have been applied by the Firms to their funds under management*

27 March 2020; requirement to file (among other points) a weekly confirmation as to the use of LMT's by UCITS Management Companies.

May 2020*; a series of questionnaires were issued to firms managing emerging market funds requesting qualitative and quantitative data including;*

1. *the percentage of the Fund portfolio capable of being liquidated and settled within specified liquidity periods during the current period of market volatility*
2. *whether the Fund has encountered any difficulties in pricing assets of the Fund and what action has been taken to address this.*
3. *whether the Fund has encountered any other liquidity concerns.*

Conclusion: Boards are advised to ensure that appropriate liquidity management frameworks are in place. Such frameworks should include stress testing of portfolios in line with ESMA guidance and if not already in place, need to be implemented no later than 30 September 2020.

In assessing portfolio liquidity and significant redemptions in light of current market volatility, any discussions regarding the use of LMT's should be appropriately minuted and approved by the Board. The Central Bank have communicated to Irish domiciled management companies that it expects to be prior notified at an early stage if the firm is considering the use of LMT's such as gating and suspension for any funds under management. Bridge would advise that any Self-Managed Company also follow this directive.

Following on from Phase 2 of the ESMA CSA Bridge advise Board's to carry out a gap analysis of their liquidity management framework against the questions posed in the Central Bank's request for documents.

Timeline of Developments

19 Decembe r 2018

CBI issue new reporting requirements to monitor investment fund liquidity.

Central Bank of Ireland issue "Dear CEO" letter highlighting important of ongoing liquidity monitoring.

07 August 2019

02 Septembe r 2019

ESMA publish final guidance on UCITS and AIF stress testing.

ESMA announce phased Common Supervisory Action to assess UCITS liquidity.

31 January 2020

26 March 2020

CBI issue questionnaire to all UCITS fund management companies on LMT's

CBI require weekly notification on use of LMT's

27 March 2020

March 2020

CBI expand the depth of investigation on significant redemptions.

CBI select emerging market funds to submit further qualitative data on fund liquidity.

May 2020

Regulatory Developments

Implementation Deadline	Regulatory Event	Regulatory Update/Actions Required
Probable 2020	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.
Q12020	Shareholders Rights Directive II	30 March 2020, SRD II came into effect in Ireland.
Q3 2020	FATCA & CRS Filings	09 June 2020, Revenue Commissioners confirmed an extension to the FATCA and CRS filing deadline for 2019 calendar year. A three month extension to **30 September 2020** has been agreed with the EU Commission.
Q3 2020	Additions and changes to Pre-Approved Control Functions	CBI have added a new PCF role; Chief Information Officer as well as splitting PCF-39 (Designated Persons) into six distinct PCF roles aligned to specific managerial functions. https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/news/notice-of-intention---additions-to-the-list-of-pcfs-february-2020.pdf?sfvrsn=4
Q3 2020	ESMA Guidelines on liquidity stress testing in UCITS and AIFs	30 September 2020, new Guidelines on liquidity stress testing in UCITS and AIFs will apply in addition to the existing requirements on liquidity stress testing set out in the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive.
Q1 2021	Securities Financing Transactions Regulation	SFDR and the associated RTS are scheduled to apply from **10 March 2021** (however, the RTS Consultation Paper notes potential delays in this timeline). Full implementation will extend out to 2022. https://www.esma.europa.eu/sites/default/files/jc_2020_16_-_joint_consultation_paper_on_esg_disclosures.pdf
2020	5th AML Directive	19 June 2018, 5th 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).
TBC	Sustainable Finance Plan – Disclosure Requirements	Draft regulations presented by the European Commission – TBC