Simmons & Simmons

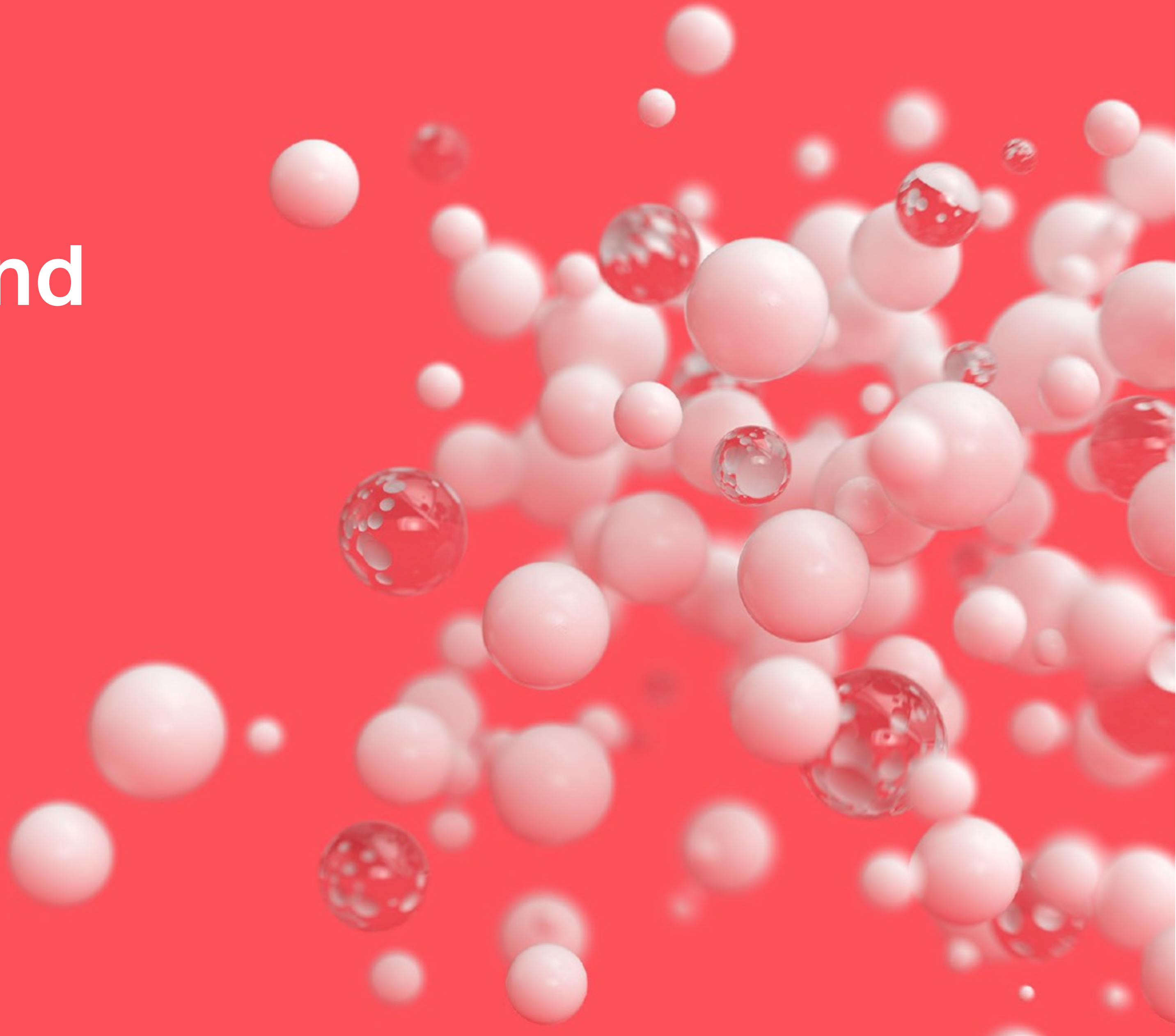
Irish Funds & Regulatory Quarterly Update

1 October – 31 December 2024

Index

Central Bank of Ireland ("CBI")

Updates



CBI Updates

CBI publishes Markets Update No 9 of 2024

On 21 October 2024, the CBI published Issue No 9 2024 of its regular Markets Update, in which it sets out alerts of interest to Irish regulated firms and other market participants.

The new Update contains a single item:

Notice of Intention in relation to the application of the ESMA Guidelines on funds' names using ESG or sustainability-related terms

ESMA's guidelines on fund names using ESG or sustainability-related terms (the "Guidelines") were published on 21 August 2024 and apply three months after the date of publication, i.e., from 21 November 2024.

The Guidelines are of relevance to

- UCITS ManCos and internally managed UCITS
- AIFMs and internally managed AIFs
- managers of EuVECA and EuSEF and
- managers of Money Market Funds

They apply in respect of both

- the obligation for a firm to act honestly and fairly in conducting its business; and
- the obligation that all information included in marketing communications is fair, clear and not misleading.

The CBI has published a Notice, signalling the CBI's expectation of full compliance with the Guidelines from 21 November 2024. In due course, the CBI intends to consult on incorporating a provision into its UCITS Regulations and AIF Rulebook that all in scope managers adhere to the Guidelines.

The Notice follows the CBI's announcement of a new streamlined filing process for updates to fund names based on the Guidelines' requirements, which was included in Markets Update No 8 of 2024.

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Regional Impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	Simmons Insights Article and CBI Markets Update

CBI Updates

CBI publishes Markets Update No 10 of 2024

On 1 November 2024, the CBI published Issue No 10 2024 of its regular Markets Update, in which it sets out alerts of interest to Irish regulated firms and other market participants.

The new Update contains four items:

- **ESMA, the European Commission and the ECB joint statement on shortening the standard securities settlement cycle**

On 15 October 2024, ESMA, the European Commission ("Commission") and the ECB published a joint statement, "Shortening the standard securities settlement cycle in the European Union: next steps".

The statement anticipates some of the conclusions of the report on this topic, which ESMA has been mandated to submit (and which is expected "in the coming months") and highlights the need for fast action if the EU wants to avoid prolonging and amplifying the negative impacts of the misalignment with major jurisdictions internationally.

The statement also notes that ESMA, the Commission, the ECB and NCAs have agreed to establish a governance structure, incorporating the EU financial industry, as soon as possible to oversee and support the technical preparations of any future move to T+1.

- **ESG fund names guidelines – update on Streamlined Filing Process for UCITS and AIFs**

As we reported at the time, Markets Update No 8 of 2024 announced a new streamlined filing process for updates to fund names based on the requirements set out in ESMA's Guidelines on fund names using ESG or sustainability-related terms (the "Guidelines").

On 1 November 2024, CBI updated this process to reflect implementation of the Guidelines (which come into effect from 21 November 2024). The update enables funds to incorporate minor changes to disclosure in their offering and pre-contractual documentation where these are made solely to bring the fund into compliance with the requirements of the Guidelines.

The process for making such filings can be found in the CBI's process clarification document.

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Regional Impact	Ireland
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CBI Updates

CBI publishes Markets Update No 10 of 2024 continued...

- **CBI updates its UCITS Q&As**

On 1 November 2024, the CBI published the 41st Edition of the UCITS Q&A, revising Q&As ID 1012, ID 1016, and ID 1088 (in the section entitled 'UCITS ETF') to reflect changes enabling the ETF naming requirement at the share class level.

- **Requirements for establishing an open-ended ELTIF with limited liquidity**

On 1 November 2024, the CBI updated its ELTIF application form to reflect the coming into force of Level 2 RTS in relation to establishing open-ended ELTIFs. The update also concerns information on the authorisation process for ELTIFs.

Where an AIFM wishes to:

- establish an open-ended ELTIF (in the form of either a Professional Investor ELTIF or a Qualified Investor ELTIF) with limited liquidity; and
- take advantage of the 24 hour authorisation process,

it must make a pre-submission to fundsauthorisation@centralbank.ie in good time prior to the requested authorisation.

The pre-submission must address:

- the possibility of redemptions during the life of the ELTIF;
- the possibility of redemptions which are more frequent than quarterly (where relevant); and
- the provision of a notice period of less than 3 months (again, where relevant).

Once cleared, the ELTIF will proceed to authorisation in the normal course.

Retail Investor ELTIFs should include the above details in their initial filing with the CBI.

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CBI Updates

CBI publishes Markets Update No 11 of 2024

On 20 November 2024, the CBI published Issue No 11 2024 of its regular Markets Update, in which it sets out alerts of interest to Irish regulated firms and other market participants.

The new Update contains a single item:

ESAs survey of in scope UCITS and AIFs

On 29 October 2024, ahead of the publication of EMIR 3 and in cooperation with ESMA and EIOPA, the EBA launched a short survey aimed at collecting information on UCITS and AIFs in scope of initial margin ("IM") model authorisation in the EU.

The survey can be found here.

The password is **EMIR3!Immodels**

Which firms will be expected to complete the survey?

UCITS and AIFs expected to fill in the survey are those currently subject to the requirement to exchange initial margin (with aggregate average notional amount exceeding EUR 8bn) and using at least one IM model to comply with that requirement. Firms' participation in the survey is not mandatory - it is, though, "strongly encouraged".

How will the information be used?

In its letter to the CBI, the EBA notes that the information will:

- guide the EBA in the setup of its central validation function for pro-forma margin models (such as ISDA SIMM);
- inform the EBA's response to the Commission's Call for advice on a possible Delegated Act on fees, which the EBA must deliver by Q2 2025; and
- be used to develop proportionate requirements for entities within the scope of IM model authorisation in particular for smaller entities (Phase 5 and Phase 6 entities) as part of upcoming mandates to develop Guidelines on application and authorisation process under EMIR 3 and revised draft RTS on IMMV.

Next Steps

- The deadline for submitting responses is **29 November 2024**.
- The EBA says that the short deadline will allow it to integrate responses received with its advice on a possible Delegated Act on fees before consulting industry, which the EMA expects to do in Q1 2025.

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Regional Impact	Ireland and EU
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Link	Simmons Insights Article and CBI Markets Update

CBI Updates

CBI publishes Markets Update No 12 of 2024

On 29 November 2024, the CBI published Issue No 12 2024 of its regular Markets Update, in which it sets out alerts of interest to Irish regulated firms and other market participants.

The new Update contains the following three items:

- **CBI industry letter: thematic review of trading arrangements of ETFs in Ireland**

On 28 November 2024, the CBI published an industry letter in which it sets out the key findings of its 2023 review of the primary and secondary market trading arrangements of Irish authorised ETFs.

The letter also makes clear the CBI's expectations and highlights actions to be taken by the boards of Fund Management Companies and where appropriate, these are required to be incorporated into to their frameworks and practices **by the end of Q2 2025**.

The CBI review found that the Irish ETF ecosystem is "functioning effectively" at a sector level, with the Authorised Participant ("AP") cohort functioning consistently during both 'normal' and 'stressed' market conditions.

There were, though, shortcomings concerning firms' oversight of APs and Contracted Market Makers (CMMs) - the CBI notes its' view that the governance structure in place between a Firm and APs/CMMs in relation to the arbitrage mechanism and liquidity provision of ETFs should be consistent with Measure 4 of IOSCO's Good Practices.

Other key findings include (a) inadequate due diligence of APs/CMMs; (b) limited ongoing monitoring of APs/CMMs; (c) lack of board oversight; and (d) AP and Market Maker concentration.

- **European Commission consultation on Guidelines on aspects of the EU's Artificial Intelligence Act**

On 13 November 2024, the European Artificial Intelligence (AI) Office launched a consultation on the application of the definition of an AI system and prohibited AI practices under the EU's AI Act. The consultation closes on 11 December 2024.

The consultation is targeted at (among others) providers and deployers of AI systems including businesses, authorities (including local public authorities) and other organisations and the CBI regards the consultation as 'a great opportunity for market participants to share their observations with the Commission'.

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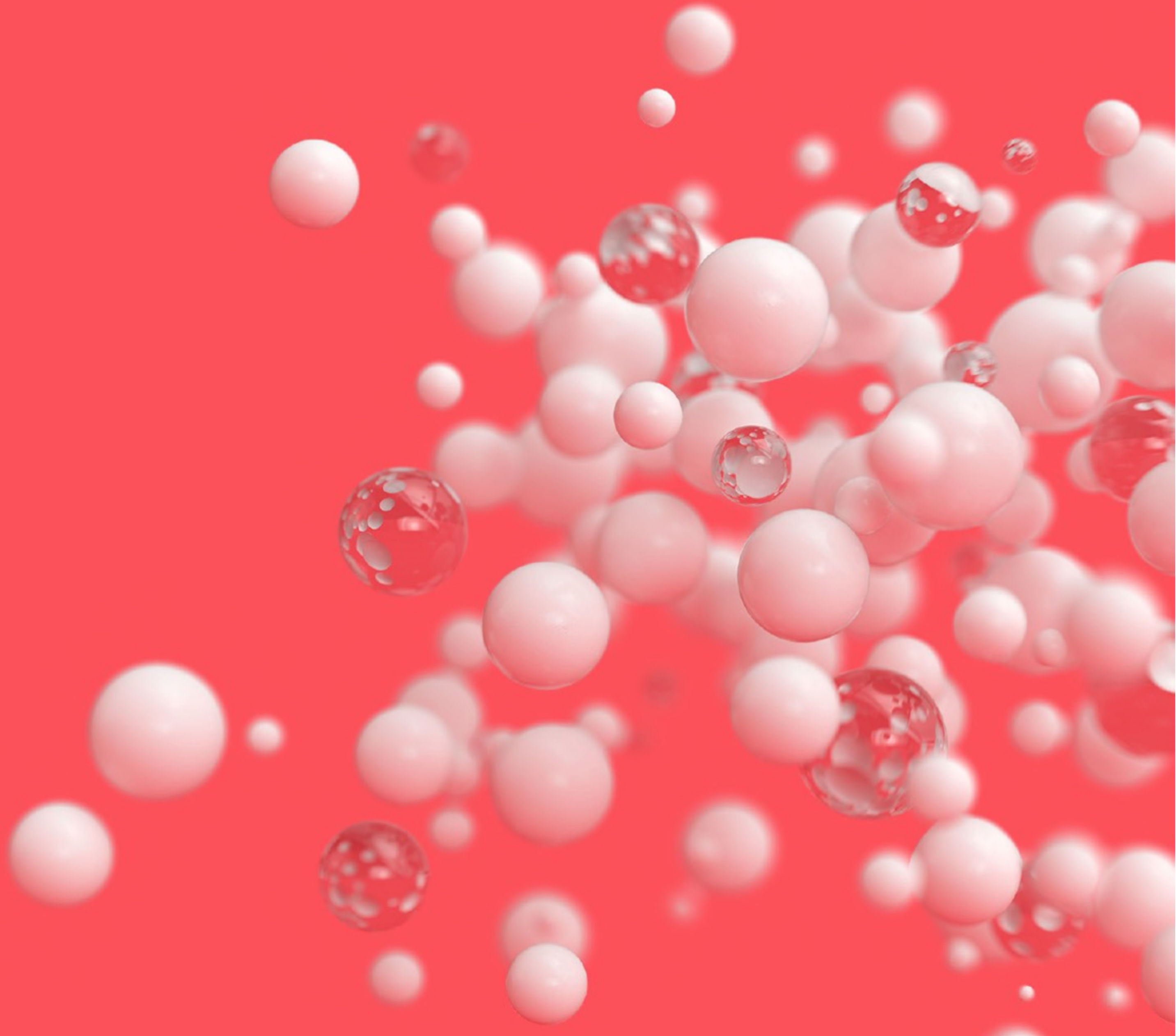
Link	Simmons Insights Article and CBI Markets Update

Irish and European Union (EU)

Updates



EU Updates

Cybersecurity in Ireland: navigating NIS2

The European Union has made significant strides in cybersecurity and data protection legislation, culminating in the introduction of the second Network and Information Security Directive ("NIS2"), which replaces the earlier NIS1 directive. This move represents a major advancement in the EU's efforts to enhance cybersecurity across member states, including Ireland. NIS2 broadens the scope of sectors and entities covered, introduces stricter security and incident reporting requirements, and emphasizes supply chain security. It mandates entities to adopt comprehensive risk management measures, enforce robust security policies, and establish incident response and recovery plans. Additionally, NIS2 strengthens the incident reporting framework, requiring entities to report significant cyber incidents within a tighter timeframe and encourages information sharing to foster a culture of security.

NIS2's reach extends beyond the EU's borders, imposing obligations on entities outside the EU that provide services within it, thus ensuring a global compliance framework. It categorizes entities into Essential and Important, significantly expanding the range of sectors covered. In Ireland, the transposition of NIS2 into national law will be facilitated by the National Cyber Security Bill 2024, establishing the National Cyber Security Centre (NCSC) on a statutory basis and outlining the roles and powers of competent authorities for enforcement. Businesses within the scope of NIS2 must prepare for compliance by conducting risk assessments, updating incident response plans, and ensuring robust cybersecurity measures are in place.

The transition from NIS1 to NIS2 signifies a pivotal enhancement in the EU's cybersecurity framework, demanding a comprehensive and proactive approach from businesses to meet the new requirements.

For additional information, please see link to our full Simmons Insights Article linked opposite.

Next Steps

- Businesses operating within the scope of NIS2 need to begin preparing for compliance if they haven't already. This involves conducting thorough risk assessments, updating incident response plans, ensuring robust cybersecurity measures are in place, and understanding the specific obligations and reporting requirements applicable to them.

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Link	Simmons Insights Article

EU Updates

EU Council adopts regulation on ESG rating activities (ESG ratings users and providers)

What: On 19 November, the European Council adopted a new regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities. This follows the European Parliament and Council reaching provisional political agreement on the regulation in February and the Parliament voting to adopt the regulation in April 2024.

Key details: Some of the notable elements of the regulation:

- ESG rating providers established in the EU will need to be authorised and supervised by ESMA;
- they will have to comply with transparency requirements, in particular with regard to their methodology and sources of information;
- ESG rating providers established outside the EU that wish to operate in the EU, will need to obtain an endorsement of their ESG ratings by an EU authorised ESG rating provider, a recognition based on a quantitative criterion, or be included in the EU registry of ESG rating providers on the basis of an equivalence decision; and
- the regulation introduces as a principle a separation of business and activities in order to prevent conflicts of interest.

The text reflects the agreement made in February, further details of the content of the regulation can be found in our insights article here.

Next Steps

- Once the regulation is published in the Official Journal it will enter into force after twenty days. The new rules will apply 18 months after entry into force.

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EU Updates

European Commission publishes new FAQs under Article 8 of the Taxonomy Regulation (multi-sector)

What: On 8 November 2024, a new Commission Notice was published in the Official Journal of the EU, which provides the Commission's views on the interpretation and implementation of certain aspects of the Disclosures Delegated Act made under Article 8(4) of the EU's Taxonomy Regulation. The Disclosures Delegated Act deals with the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets.

Key details: The purpose of the Notice is to provide further guidance through the Frequently Asked Questions (FAQs) on the reporting of their key performance indicators under the Disclosures Delegated Act.

The answers given in the Notice:

- clarify the rules already contained in the applicable legislation;
- neither extend the rights and obligations deriving from such legislation, nor introduce any additional requirements for the operators and competent authorities; and
- are merely intended to help financial undertakings implement the relevant legal rules.

Read more in our insights article here and watch out for our upcoming Briefing Note.

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