

Simmons & Simmons

Irish Funds & Regulatory Quarterly Update

1 October – 31 December 2023



Subject Index



<u>Executive Summary</u>	<u>3</u>	<u>High Court of Ireland</u>	<u>21</u>
<u>Central Bank of Ireland (“CBI”) – Updates</u>	<u>4</u>	<u>High Court decision in DQ Entertainment Ltd</u>	<u>22</u>
<u>CBI published Markets Update No. 8 of 2023</u>	<u>5</u>	<u>European Union (EU) Updates</u>	<u>23</u>
<u>CBI published Markets Update No. 9 of 2023</u>	<u>6</u>	<u>EMIR – ESAs Final Report on bilateral margining of equity options</u>	<u>24</u>
<u>CBI published Markets Update No. 10 of 2023</u>	<u>7</u>	<u>Joint Consultation Paper - MiCAR</u>	<u>25</u>
<u>CBI’s first fine for an ICAV for breach of EMIR reporting obligations</u>	<u>8</u>	<u>MiFID II</u>	<u>26</u>
<u>CBI consults on new ELTIF rules</u>	<u>9</u>	<u>ESG: new Taxonomy Regulation delegated acts published in Official Journal</u>	<u>27</u>
<u>CBI’s Dear Chair letter on asset valuation</u>	<u>10</u>	<u>ESAs launch joint consultation on second batch of policy mandates under the Digital Operational Resilience Act (“DORA”)</u>	<u>28</u>
<u>CP157 – Macroprudential Measures for GBP Liability Driven Investment Funds</u>	<u>11</u>	<u>ESMA updates guidelines on funds’ names using ESG or related terms</u>	<u>29</u>
<u>CBI responds to the consultations on the IAF</u>	<u>12</u>	<u>ESG: client note ‘Top 10 talking points from the ESAs’ SFDR proposals’</u>	<u>30</u>
<u>CBI updates its AIFMD Q&As</u>	<u>13</u>	<u>ESMA has updated its PRIIPs KID Q&As document</u>	<u>31</u>
<u>CBI updates its AIFMD Q&As</u>	<u>14</u>	<u>Contacts</u>	<u>32</u>
<u>CBI updates its UCITS Q&A</u>	<u>15</u>		
<u>Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010) and Guidance on Fitness and Probity Standards</u>	<u>16</u>		
<u>Irish Government Updates</u>	<u>17</u>		
<u>The Department of Finance published a progress update on review of funds sector in Ireland</u>	<u>18</u>		
<u>The Department of Finance published its feedback statement in response to Public Consultation on the National Discretions contained in the Markets in Crypto Assets Regulation (“MiCAR”)</u>	<u>19</u>		

Spotlight in this edition

Each quarter we will introduce you to a member of our funds and regulatory team who will also outline what is covered for this quarter.



Jeffrey Horahan

Jeffrey joined the firm in 2022 and is based in our Dublin office. He is a member of the firm's financial services regulation team. Jeffrey is a barrister and a Fellow of the Chartered Institute of Arbitrators.

Jeffrey primarily advises on the Irish and EU regulatory perimeter and works across a wide range of clients. He advises on various aspects of financial services regulation, AML, fitness & probity, ESG and sustainable finance, data protection, the Individual Accountability Framework and the rules of the CBI.

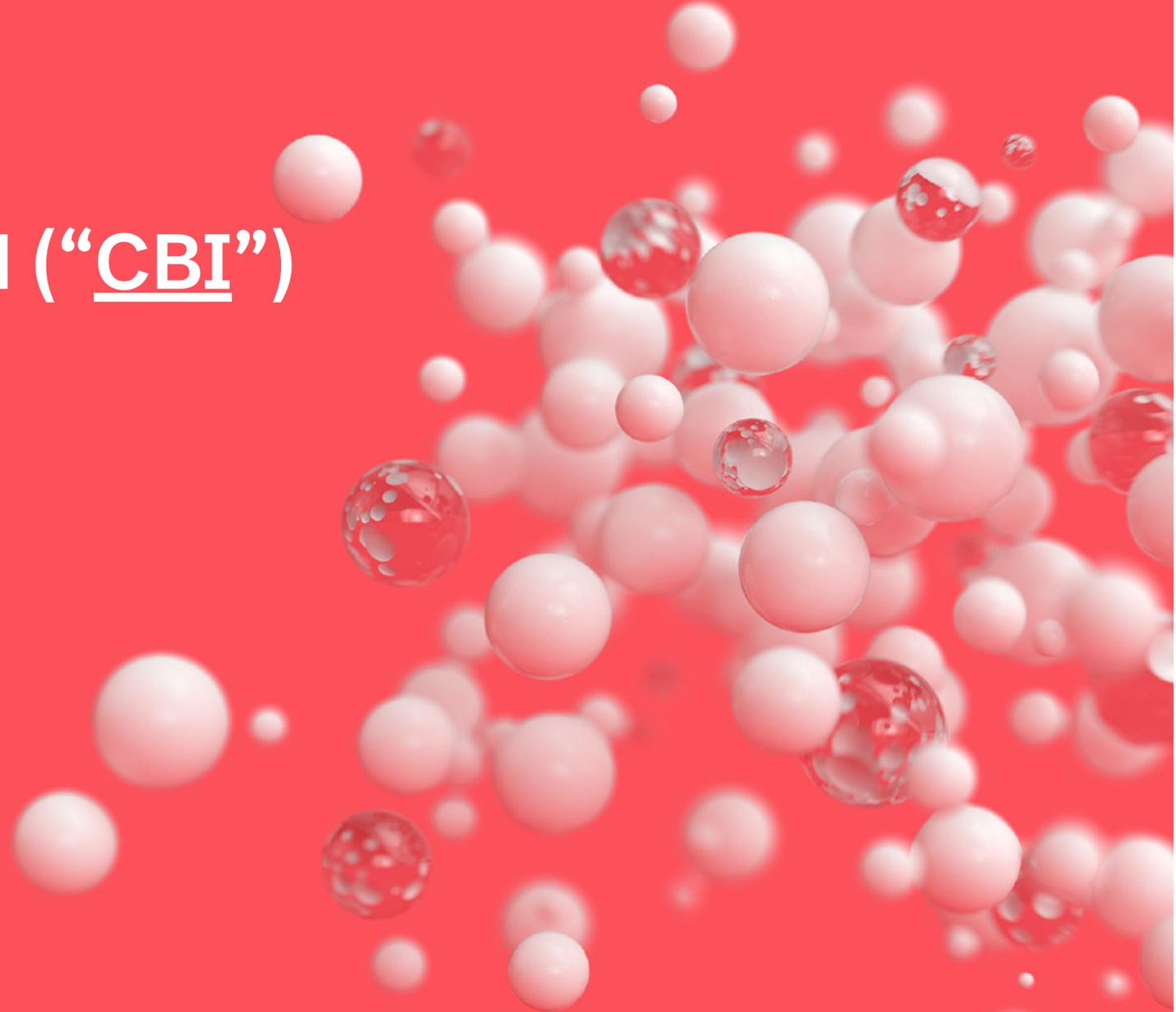
Prior to joining the firm, Jeffrey practiced at the Bar of Ireland for a number of years; and advised on and was involved in a broad range of legal proceedings. During this time, Jeffrey was an adjudicator for the Financial Services and Pensions Ombudsman, a panel member for the provision of legal and related services to the CBI, appointed an Independent Appeals Officer for the National Childcare Scheme, and acted for the Mother and Baby Homes Commission of Investigation. Jeffrey also has a number of publications in the Commercial Law Practitioner and LexisNexis.

What's coming up in this edition

In this edition we cover updates from the CBI, the Irish Government and the European Union. Our highlights are as follows:

- CBI published Markets Update Nos. 8, 9 and 10 of 2023;
- CBI responds to the consultations on the IAF;
- CBI issues the first ever fine for an Irish Collective Asset-management Vehicles (“ICAV”);
- CBI consults on the new European Long-term Investment Fund (“ELTIF”) rules;
- CBI updates its AIFMD Q&As;
- CBI updates its UCITS Q&A;
- Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010) and Guidance on Fitness and Probity Standards;
- The Department of Finance published its feedback statement in response to Public Consultation on the National Discretions contained MiCAR; and
- ESMA has updated its PRIIPs KID Q&As document.

Central Bank of Ireland (“CBI”) - Updates



CBI Updates

CBI published Markets Update No. 8 of 2023

On 4 October 2023, the CBI published [Issue No 8 2023](#) 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 number of items - we have identified the following as being of particular interest:

- James O’Sullivan’s speech at the Certified Institute of Fund Directors Annual Conference;
- CBI updated guidance on online Orion applications;
- ESMA CSA on MiFID II sustainability requirements;
- ESMA Risk Analysis on use of ESG-related language in the EU fund industry;
- ESAs’ second report on voluntary principal adverse impact (“PAI”) disclosures under the SFDR;
- ESMA’s work programme for 2024;
- Update to ESMA’s European single election format reporting manual;
- ESMA sees prevailing market uncertainty as downside risks rise;
- ESMA’s analysis of the cross-border investment activity of firms; and
- ESMA report on 2022 AIFMD and UCITS sanctions.

For further information, please see [link to our full article](#) which discusses each of the topics in further detail.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	All sectors
Link	CBI Markets Update No. 8

CBI published Markets Update No. 9 of 2023

On 1 November 2023, the CBI published Issue No 9 2023 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 CBI publications:

- The CBI consults on a new ELTIF chapter in the AIF Rulebook;
- The CBI's response to the Departments of Finance Funds Sector 2030 Review; and
- The CBI updates its AIFMD Q&As.

For further information, please see [link](#) to our full article which discusses each of the topics in further detail.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and regulated Funds
Links	CBI Markets Update No. 9 and AIFMD Q&As

CBI Updates

CBI published Markets Update No. 10 of 2023

On 27 November 2023, the CBI published Issue No 10 2023 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 items.

- The CBI updates its UCITS Q&A;
- The CBI updates its AIFMD Q&A; and
- The CBI publishes Feedback Statement to Consultation Paper CP152.

For further information, please see [link](#) to our full article which discusses each of the topics in further detail.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and regulated Funds
Links	CBI Markets Update No. 10 , UCITS Q&As , AIFMD Q&As and Feedback Statement

CBI Updates

CBI Updates

CBI's first fine for an ICAV for breach of EMIR reporting obligations

On 28 November 2023, the CBI reported that it had reprimanded and fined an authorised UCITS ICAV the sum of €192,500 under Regulation 32 of the EMIR Regulations.

This represents the first monetary penalty which the CBI has imposed on an investment fund to date.

The fine relates to the ICAV's breach of its reporting obligation under Article 9(1) of EMIR, which requires details of any derivative contracts to be reported to a registered trade repository no later than the working day after the contract is concluded.

In this case, the ICAV failed to report 200,640 derivative trades entered into by one of its sub-funds between January 2018 and May 2020.

The initial fine was €275,000, though this was discounted by 30% as provided under the EMIR Regulations Settlement Scheme. The CBI notes that the ICAV "provided the expected level of cooperation".

It should also be noted that the Board of the ICAV has confirmed that the remediation was at no expense to the ICAV and/or its investors.

For further information please see link to our full Simmons Insights article.

Lessons to be learned

The fine underlines how important it is for firms to ensure that

- there is appropriate oversight of data reporting from Board level down, including where this is delegated or outsourced and
- delegation of reporting obligations is appropriately managed so there is no confusion between the delegates as to their respective responsibilities.

The case also highlights the CBI's expectation that firms should bring material failures to the regulator's attention at the earliest opportunity and act speedily to address identified issues. Here, the ICAV had identified the breach in May 2020 but only notified the CBI in March 2021, following engagement which the CBI initiated.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	Simmons Insights article

CBI Updates

CBI consults on new ELTIF rules

With an amended ELTIF Regulation ("[ELTIF 2.0](#)") coming into effect on 10 January 2024, the CBI has published consultation paper CP155 (the "[CP](#)"), on the introduction of a new Chapter 6 in its AIF Rulebook.

This would establish the regulatory regime for Irish-domiciled ELTIFs, a welcome addition to the range of Irish funds available.

What's the background?

Since their introduction in December 2015, not only have there been fewer ELTIFs launched than had originally been expected but these have been limited to a small number of Member States in the EU, being very largely concentrated in Luxembourg, France, Italy and Spain.

However, the amendments agreed earlier this year by the Council of the EU and the European Parliament are intended to kick start the ELTIF brand by, among other things:

- broadening the range of eligible assets
- removing some of the existing restrictions and
- allowing marketing of ELTIFs to retail investors, subject to investor protection rules.

The changes will take effect from 10 January 2024.

In preparation for that, the CBI is now putting forward a draft regulatory framework for an Irish ELTIF.

The CP's proposals very largely mirror the provisions in ELTIF 2.0

For further information please see link to our full Simmons Insights article.

What's next?

What happens next?

The consultation period for the CP, which was published on 1 November 2023, runs to **13 December 2023**. The CBI's intention is for the new rules to apply from the same date as the amended ELTIF Regulation, i.e., **10 January 2024**.

To be ready for this date, ESMA is currently finalising level 2 measures for ELTIF 2.0, following its consultation earlier this year. For a summary of the consultation proposals, see our article [here](#).

We will be following the outcomes of both the CBI's and ESMA's work and are represented on the Irish Funds' response to the CP.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	Simmons Insights article

CBI's Dear Chair letter on asset valuation

The CBI's Dear Chair letter sets out findings arising from the 2022 ESMA Common Supervisory Action ("[CSA](#)") on asset valuation under the UCITS Directive and AIFMD.

In 2022, along with other EU NCAs, the CBI took part in the ESMA CSA, which reviewed how managers of UCITS and AIFs approach the issue of asset valuation. For an overview of the CSA's subject matter, see our article [here](#).

For its part of the CSA, the CBI investigated whether Irish fund management companies ("[Firms](#)"):

- comply with the UCITS Directive and / or AIFMD and Regulations on asset valuation;
- adhere to applicable valuation principles and methodologies to reflect a true and fair view of their financial positions both under normal and stressed market conditions; or
- evaluated how their policies and procedures worked during the COVID pandemic.

This work consisted primarily of a questionnaire issued to a sample of 30 Firms. Each submission was then subject to a desk-based supervisory review, with 40% of the Firms being subject additionally to inspection calls and on-site inspections.

ESMA's [Final Report](#), published in May 2023, set out its findings from the CSA. Our summary of the Final Report can be found [here](#).

On 14 December, the CBI published a [Dear Chair letter](#) (the "Letter") in which it:

- highlighted the main findings of the CSA;
- set out the CBI's observations on the issues it revealed; and
- set out key actions to be taken by all Firms in respect of the issues identified.

The CBI notes that the findings and observations which it outlines in the Letter are "an important reference for Firms in reviewing their valuation arrangements" and reminds Firms of the need to be proactive in identifying and implementing any improvements required to mitigate against key risks to which the Firm and its investors may be exposed.

The Letter should be read alongside the ESMA Final Report.

What did the CBI find

General findings

The overall level of compliance was good - most Firms demonstrated adherence to the relevant legislation and supervisory expectations.

However, a significant minority of Firms could **not** evidence compliance with CBI expectations - a number of these Firms were issued with Risk Mitigation Programmes ("[RMPs](#)").

However, deficiencies in the quality and detail of the information provided by "the vast majority" of Firms in response to the CSA questionnaire meant that the CBI had to follow-up to gather further evidence and information.

The CBI Firms that they should ensure that Senior Management review all information before this is submitted - in future, issues with the quality of submissions will be taken up directly with Firms through their CBI Supervision teams.

Specific findings

Group asset valuation policies and procedures

Some Firms still rely on group valuation policies or procedures with limited or no reference to their Irish operations.

As this risks failing to capture the local regulatory environment or the operational roles and responsibilities of those involved in valuing the Irish assets, it could result in inaccuracies in the valuation process at the Irish entity.

Lack of formal asset valuation error procedures

Some Firms lacked stand-alone asset valuation error procedures, which would outline what controls and escalation measures should be applied where there was an error in valuation or calculation of the NAV.

Error procedures provided by other Firms failed to sufficiently outline how the Fund would revalue, recalculate and resettle affected transactions and gave no, or very limited, detail on how investor compensation would be determined or processed.

Poor quality of asset valuation policies and procedures

The asset valuation policies and procedures of a minority of Firms fell below the level of detail that would be reasonably required to cover the valuation process.

The asset valuation process should be supported by documented policies and procedures, clearly outlining the operational tasks and responsibilities for all parties involved, so a true and fair representation of the fund's financial position is reached.

CP157 – Macroprudential Measures for GBP Liability Driven Investment Funds

In light of the “*market crisis highlighted vulnerabilities amongst GBP denominated liability driven investment strategies that pose a risk to financial stability, the CBI outlined supervisory expectations for GBP LDI funds to maintain an improved level of resilience via an industry letter.*”

“This letter was introduced in coordination with the Commission de Surveillance du Secteur Financier (CSSF), Luxembourg’s National Competent Authority (NCA), after interaction with the European Securities and Markets Authority (ESMA). The letter outlined that GBP denominated LDI funds were expected generally to maintain the enhanced level of resilience observed at the time, which was resilience to a 300-400 basis point increase in yields (referred to as a ‘yield buffer’). This consultation paper outlines a proposal to codify and, in certain cases, augment the existing yield buffer measure, including via the use of Article 25 of the Alternative Investment Fund Managers Directive (AIFMD). Building on the November 2022 letter, this consultation paper outlines a policy proposal to strengthen the steady-state resilience of Irish authorised GBP denominated LDI funds, specifically:

- Such funds must maintain a minimum 300 bps yield buffer.
- The yield buffer applies equally to all Irish authorised GBP denominated LDI funds.
- Only assets on the funds balance sheet are considered as components of the yield buffer, and all of a fund’s exposures are considered in the yield buffer’s calculation. Macroprudential policy measures for GBP LDI funds CBI.
- Irish authorised GBP denominated LDI funds would be required to calculate their monthly average yield buffer at the end of each month. This would be calculated as the monthly average of the yield buffer based on the yield buffer at the end of each business day of the month. The monthly average yield buffer would then need to be reported as a single observation to the CBI following each month-end and should be greater than or equal to 300 bps, subject to the usability feature outlined below.
- In order to provide limited flexibility to facilitate buffer usability, on a rolling basis over the last four reporting observations (i.e. monthly average yield buffer at the end of each month), one of the reporting observations can be below 300 bps in exceptional circumstances. The use of this flexibility will be monitored, with the expectation that it is not used on a regular basis.
- The yield buffer should also help build liquidity resilience, and will be accompanied by targeted high-level guidance on liquidity for Irish authorised GBP denominated LDI funds.”

For further information please see [link to CP157](#)

Timing



The CP157 closes on 18 January 2024, with the publication of its feedback statement and final measures in Q1 2024 with a 3 month implementation period.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	CP157

CBI Updates

CBI Updates

CBI responds to the consultations on the Individual Accountability Framework (“IAF”)

The Central Bank (Individual Accountability Framework) Act 2023 (the “IAF Act”) was signed into law on 9 March 2023 and was partially commenced on 19 April 2023.

The Central Bank has conducted two public consultations on aspects of the IAF which are discussed below:

- CP153 – (Enhanced governance, performance and accountability in financial services regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023) and
- CP154 – (Consolidated Guidelines in respect of the Central Bank’s Administrative Sanctions Procedure).

Following these two consultation papers, the CBI has published its feedback statements to CP 153 on 16 November 2023 and CP 154 on 13 December 2023.

For further information please see link to the CBI’s feedback statements

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Links	CP153 Feedback Statement and CP154 Feedback Statement

CBI Updates

CBI Updates

CBI updates its AIFMD Q&As

On 01 November 2023, the CBI published the 48th Edition of its AIFMD Q&A.

A new Q&A ID 1156 sets out the circumstances in which the CBI can exempt an investment limited partnership (“ILP”) from the European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019, pursuant to Section 15(1) of the ILPs Act 1994.

Meanwhile, the answer in Q&A ID 1084 has been extended to confirm that, where a Qualifying Investor AIF (“QIAIF”) lends to a co-investment vehicle in which the QIAIF has a majority interest, this will not be a breach of the prohibition on granting of loans to which all AIFs, other than loan originating QIAIFs, are subject so long as the lending is ancillary to the QIAIF's predominant investment strategy.

For further information please see link to the AIFMD Q&A below.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	AIFMD Q&A

CBI updates its AIFMD Q&As

On 27 November 2023, the CBI published the 49th Edition of its AIFMD Q&A.

The update:

- revises Question ID 1126 to clarify that where an AIF is required to produce a PRIIPs KID, this should be filed through the Portal in accordance with the guidance on the CBI's website.
- includes three new Q&As - IDs 1157, 1158 and 1159 on what is permitted when a QIAIF / Retail Investor Alternative Investment Fund (“RIAIF”) invests through a subsidiary. In particular:
 - **Question ID 1157** confirms that where a QIAIF/RIAIF intends to invest through a wholly owned company or a subsidiary which has been established with the intention of the QIAIF/RIAIF using it for investment purposes, the wholly owned company or subsidiary can be considered as being established by the QIAIF/RIAIF, even where it existed prior to the establishment of the QIAIF/RIAIF.
 - **Question ID 1158** confirms that where a QIAIF/RIAIF intends to invest through a wholly owned company or subsidiary, which has been established with the intention of the QIAIF/RIAIF using it for investment purposes, the wholly owned company or subsidiary can establish or participate in the establishment of a further vehicle that is also used for investment purposes, subject to adherence with (a) the CBI's requirements in relation to subsidiaries as set out in the AIF Rulebook and (b) the requirements of Questions ID 1157 and ID 1159.
 - **Question ID 1159** confirms that a QIAIF/RIAIF may invest through a co-investment vehicle that includes other third party investors and is not a wholly owned subsidiary of the QIAIF/RIAIF.
 - Ownership / control of the co-investment vehicle must reflect the actual economic interest that the QIAIF/ RIAIF has in that vehicle while the QIAIF / RIAIF must demonstrate that the arrangements reflect the true economic interests of the parties holding shares in that vehicle.

The Board of the AIFM must document the reasons for using a co-investment vehicle, rather than a wholly owned subsidiary. These must be approved in writing by the depositary and be available to the CBI on request.

The arrangement must not be structured so as to circumvent the policy objectives of Question 1159.

CBI Updates

CBI Updates

CBI updates its UCITS Q&A

On 27 November 2023, the CBI published the 40th Edition of its UCITS Q&A.

This update revises Question ID 1109 to clarify that, from 1 January 2024, the Responsible Person of a UCITS which was authorised prior to 1 January 2023 and which must provide a PRIIPs KID should submit this to the CBI through the Portal in accordance with the guidance on the CBI's website.

More information on filing a PRIIPs KID can be found [here](#).

For further information please see link to the UCITS Q&A below.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	UCITS Q&A

Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010) and Guidance on Fitness and Probity Standards

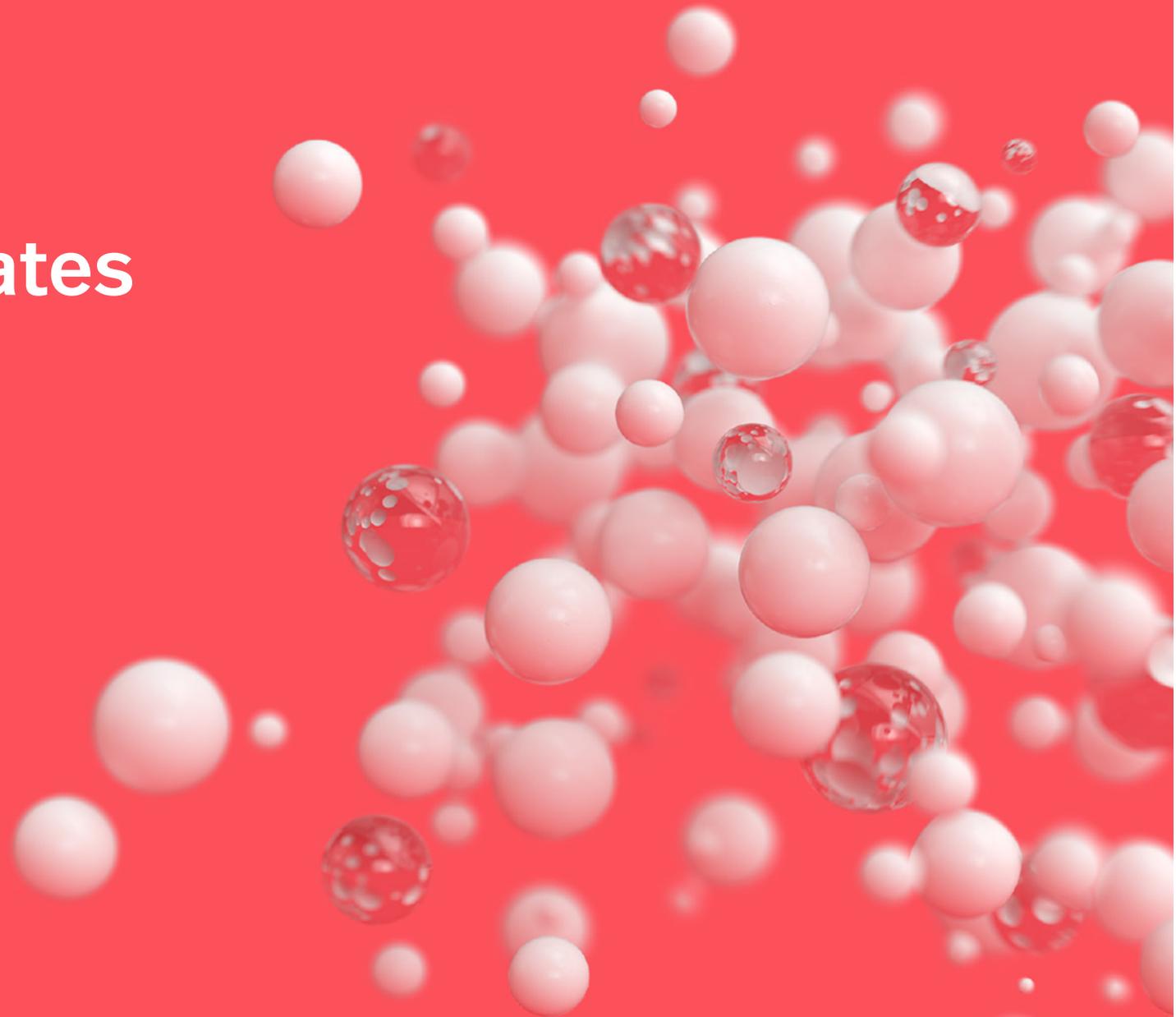
On 29 December 2023, the CBI published updated 'Fitness and Probity Standards' (the "Code") and 'Guidance on Fitness and Probity Standards' (the "Guidance"). The CBI published the Holding Companies Regulations, prescribing particular functions as CFs and PCFs for holding companies. The CBI has and may from time to time publish subsequent amending regulations which add and/or amend the list of CFs and/or PCFs.

Part 3 of the Central Bank Reform Act 2010 (the "2010 Act") provides that a person performing a controlled function ("CE") must have a level of fitness and probity appropriate to the performance of that particular function. The CBI also has the power to prescribe a subset of CFs as functions for which the prior approval of the CBI is required before a person can be appointed (pre-approval controlled functions ("PCFs")).

Part 3 of the 2010 Act applies to regulated financial service providers and holding companies established in Ireland.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Links	Fitness and Probity Standards and Guidance on Fitness and Probity

Irish Government Updates



Irish Government Updates

The Department of Finance published a progress update on review of funds sector in Ireland

On 21 December 2023, the Minister for Finance, Michael McGrath, T.D, published a progress update on the current review underway of the funds sector in Ireland - Funds Sector 2030:

A Framework for Open, Resilient & Developing Markets: [Progress Update](#).

Since the terms of reference for the review of the funds sector were agreed and published in April, a team has been established within the Department of Finance to undertake the review.

As part of this review, a public consultation took place over the summer months and closed on 15 September 2023. 193 responses to the consultation were received, with over 50 responses being from industry participants and 140 from private individuals. The receipt of 140 submissions from private individuals was also significant as these provided useful insight into the issues impacting retail investors.

The progress update highlights the main trends, risks, challenges and opportunities facing the funds industry in Ireland out to 2030, as identified in the responses. The Review team has reviewed each submission and the proposals raised are now being considered in further detail.

For further information we have included a link to the Department of Finance's progress update.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Link	Progress update

What's next?

Additional engagement with industry participants is well underway and will continue into 2024, seeking additional data and deeper insights on the issues raised. A report will be presented to the Minister by summer 2024.

The Department of Finance published its feedback statement in response to Public Consultation on the National Discretions contained in the Markets in Crypto Assets Regulation (“MiCAR”)

On 14 December 2023, the Department of Finance published a feedback statement on its public consultation on the limited national discretions under MiCAR.

Discretion 1 –Public disclosure of inside information Article 88 (3)

Article 88(2) of MiCAR permits issuers, offerors or persons seeking admission to trading of a crypto-asset to delay public disclosure of inside information providing certain conditions are met, such as where disclosure of the information would prejudice the legitimate interest of the issuer, offeror or persons seeking admission to trading, and where the delay in disclosure is not likely to mislead the public.

Article 88 (3) states that when an issuer, offeror or someone seeking admission to trading has delayed the disclosure to the public of inside information, they are obliged to inform the NCA about the delay of disclosure and provide an explanation. The Regulation also contains a discretion to Article 88(3) that allows for Member States to provide that a record of such an explanation is to be provided only upon the request of the NCA.

The Minister, and his officials, have decided not to exercise this discretion provided for in Article 88(3). This position is based on the principle of providing consistency across similar regulations, and that should Ireland exercise this discretion it would facilitate a lower standard to what can be availed of.

Discretion 2 –Administrative penalties and other administrative measures Article 111

Article 111(6) permits Member States to supplement the powers given in 111(2) to (5) and allow Member States to impose higher levels of penalties than those provided for in the Article. The Minister, and his officials, have made three decisions with respect to the discretions provided for in Article 111.

- The discretion under Article 111(1) will not be exercised.
- For financial penalties, where the 'minimum maximum' amounts are lower in MiCAR (e.g. €700k for natural persons), these should be brought up to the ASP minimums.
- All sanctions under the ASP (section 33Q of the Central Bank Act1942) should be available to the CBI in respect of sanctioning breaches of MiCAR obligations, and not just the minimum list of penalties contained in Article 111 of MiCAR.

Irish Government Updates

Discretion 3 –MiCAR transitional period for existing Crypto-Asset Service Provider (“CASPs”) Article 143(3)

The Minister, and his Officials, have decided to exercise this discretion and reduce the transitional period to a maximum of 12 months in line with recent guidance issued by ESMA.

Discretion 4 -Article 143(6): Simplified procedure for applications for CASP authorisation

The Minister, and his officials, have decided not to exercise the discretion provided for in Article 143(6). This position reflects the advice of ESMA and recognises that Ireland’s existing VASP registration process under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended), is not comparable to the MiCAR CASP requirements.

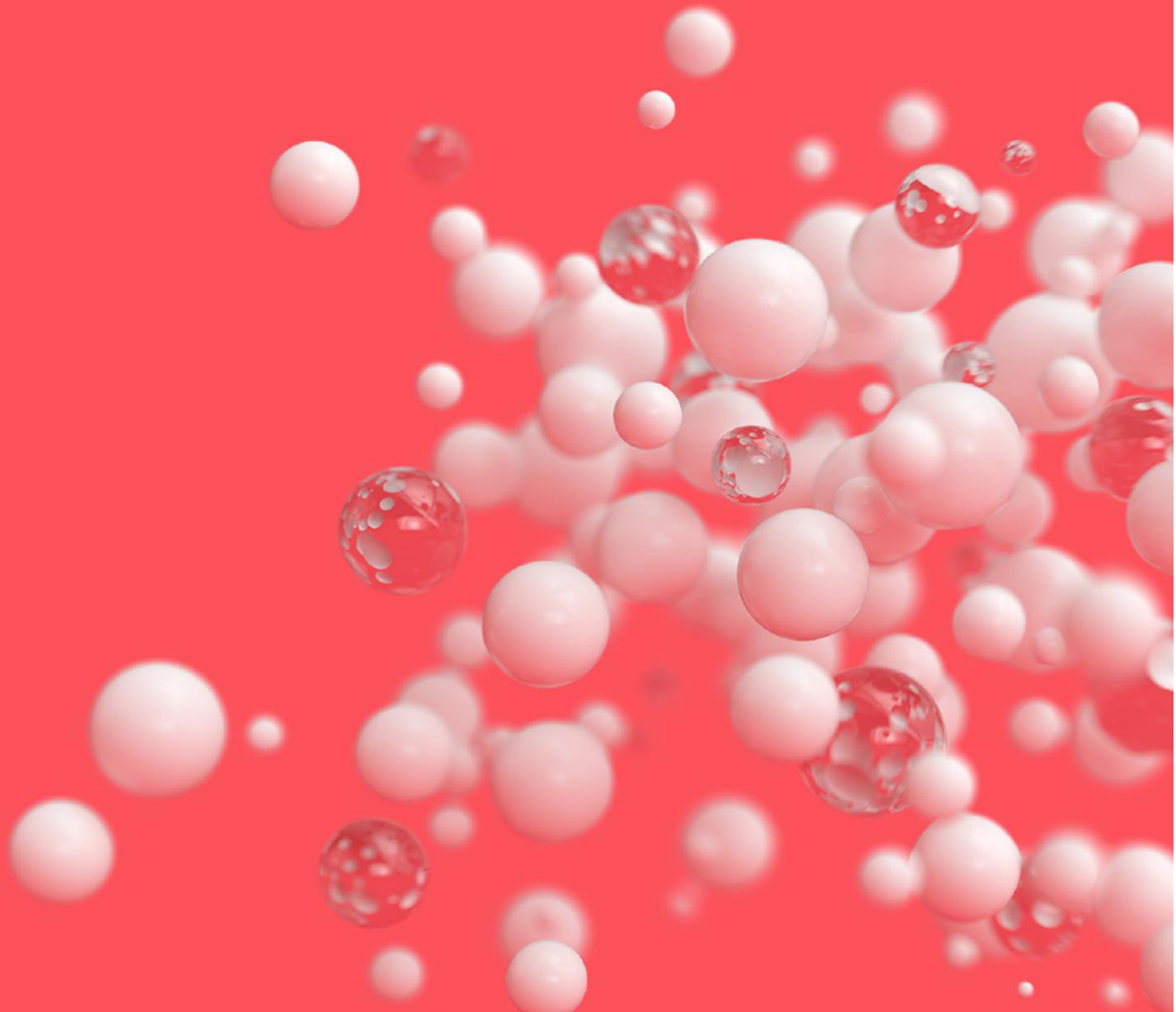
For further information we have included a link to the public consultation and the Department of feedback statement below.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Asset Management and Investment Funds, Institutional Managers and Regulated Funds
Links	Public consultation and Feedback Statement

What's next?

The transposition date for MiCAR to take effect in Ireland is 30 June 2024. Titles III and IV of MiCAR will take effect from 30 June 2024 and the full regulation will apply from 29 December 2024.

High Court of Ireland



High Court Updates

High Court update

High Court decision in DQ Entertainment Ltd

In a landmark ruling, the Irish High Court (“the Court”) has imposed personal liability of \$30,800,238.92 on a joint and several basis on three directors of DQ Entertainment (Ireland) Limited (the “Company”) for inter alia, fraudulent and reckless trading and other breaches of Irish company law. The three directors, Rashida Adenwala, Tapaas Chakravarti and Sanjay Choudhary (together the “Respondents”) who were made personally liable, were all based in India and did not ultimately contest the hearing of the application. The two Irish based directors had no order made against them, and the application was struck out as against them.

The application was the first of its kind in that it was brought by the Receiver (Patrick Bance) and the management entity of the Company, together with the secured creditor, and not a liquidator. As a result, it was necessary for the applicants to first prove that the Company was unable to pay its debts and that the reason for it not being wound up was the insufficiency of its assets.

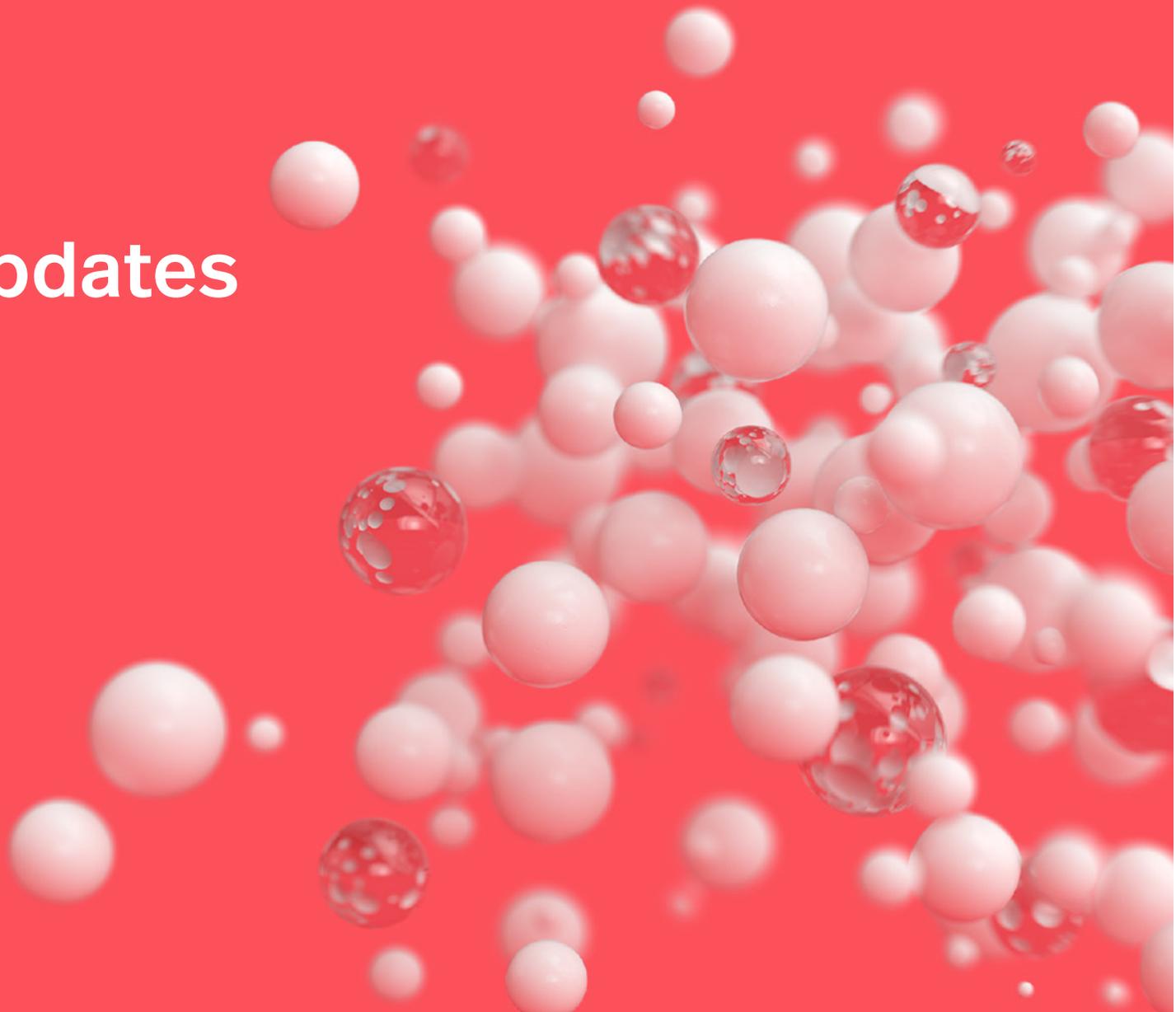
Simmons & Simmons acting on behalf of the applicants, Powerkids Entertainment (Singapore) PTE. Limited (“Powerkids”), Patrick Bance (Receiver and Manager), and Madison Pacific Trust Limited (“Madison”) (together the “Applicants”), sought various reliefs under the Companies Act 2014 against the Respondents, all of whom were directors of the Company. In particular, declarations were sought regarding the following:

1. reckless trading;
2. fraudulent trading;
3. the company not keeping adequate accounting records in contravention of sections 281 -- 25 of the Companies Act 2014;
4. that the said directors misapplied money or property of the Company and were guilty of misfeasance and breach of duty in relation to the Company; and
5. that the directors made a declaration of solvency without reasonable grounds.

For full details including the facts and decision of the case, please see our [Simmons Insights article](#) linked.

Update	1 October – 31 December 2023
Regional impact	Ireland
Sector Focus	Financial Institutions and Asset Management and Investment Funds
Link	Simmons Insights article

European Union (EU) Updates



European Union Updates

European market infrastructure regulation (“EMIR”) – ESAs Final Report on bilateral margining of equity options

On 20 December 2023, the European Supervisory Authorities’ (“ESAs”) joint draft regulatory technical standards (“RTS”) under EMIR aims to provide some clarity/guidance in respect to dealing with equity option from 4 January 2024.

4 January 2024 is currently the date on which this temporary equity option exemption expires.

The ESAs have proposed a 2-year extension to this exemption period as a result of the ongoing work required to review EMIR. This is likely this extension will be granted.

For further information, please see links to the ESAs report.

Likely outcome

- This is likely this extension period will be granted.

Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Financial Markets
Link	ESAs report

European Union Updates

Joint Consultation Paper - Markets in Crypto-Assets Regulation (“MiCAR”)

On 20 October 2023, The European Banking Authority and ESMA published a draft joint consultation paper on the “*suitability assessment of members of management body of issuers of asset-referenced tokens and of crypto-asset service providers; and guidelines on the suitability assessment of shareholders and members, whether direct or indirect, with qualifying holdings in issuers of asset-referenced tokens and in crypto-asset service providers.*”

For further information please see the draft joint consultation paper below.

Timings

- The joint consultation paper closes for feedback on 19 January 2024.



Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Financial Institutions
Link	Draft Joint Consultation Paper

European Union Updates

MiFID II

On 18 October 2023 the EU Council finalised compromise texts, and the European Parliament will vote on the provisional tests of changes to MiFID II and MiFIR in its plenary session of 15 January 2024.

Following this session, it likely mean that the final texts will be published in the Official Journal.

For further information please see link to the EU press release.

Timing and Next Steps



- 15 January 2024 – plenary session.
- End of Q1 2024 – likely publication of final texts in the Official Journal.

Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Asset Management and Investment Funds
Link	EU press release

European Union Updates

ESG: new Taxonomy Regulation delegated acts published in Official Journal

On 21 November 2023, two delegated acts made under the Taxonomy Regulation were published in the Official Journal.

In each case, the Commission adopted a legislative proposal on 13 June 2023 as part of a package of new ESG measures - see our report [here](#).

The new delegated acts are:

1. Commission Delegated Regulation (EU) 2023/2485 (the Amending Climate Delegated Act)

This amends the [Climate Delegated Act](#) by establishing technical screening criteria (“[TSC](#)”) in respect of economic activities that make a substantial contribution to the climate environmental objectives (i.e., climate change mitigation and climate change adaptation) which have not been previously included in the taxonomy.

These notably include some manufacturing activities in relation to key components for low carbon transport and electrical equipment.

The Amending Climate Delegated Act applies from 1 January 2024 (though two provisions - point (28) in Annex I and point (26) in Annex II - will apply from 1 January 2025).

2. Commission Delegated Regulation (EU) 2023/2486 (the Taxonomy Environmental Delegated Act)

This establishes TSC for economic activities making a substantial contribution to non-climate environmental objectives, i.e.,

- transition to a circular economy
- control or protection and restoration of biodiversity
- pollution prevention and
- use and protection of water and marine resources.

It also amends the [Disclosures Delegated Act](#), to clarify the disclosure obligations for the additional activities and supplement the requirements in Article 10 of the Disclosures Delegated Act.

Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Financial Institutions
Links	Disclosures Delegated Act and Climate Delegated Act

European Union Updates

ESAs launch joint consultation on second batch of policy mandates under the Digital Operational Resilience Act (“DORA”)

On 8 December 2023, the ESA launched today a public consultation on the second batch of policy mandates under DORA.

“Through DORA the ESAs are mandated to jointly develop a total of 13 policy instruments, presented in two batches. This second batch comprises the following:

- RTS and implementing technical standards (“ITS”) on content, timelines and templates on incident reporting
- Guidelines on aggregated costs and losses from major incidents
- RTS on subcontracting of critical or important functions
- RTS on oversight harmonisation
- Guidelines on oversight cooperation between ESAs and competent authorities
- RTS on threat-led penetration testing
- Further information on the draft policy products can be found in the [introductory note](#).

For further information please see link to the ESAs consultation

Timing and Next Steps



- Comments on this consultation can be sent to the ESAs via the [consultation page](#). Please note that the deadline for the submission for comments is **4 March 2024**. All contributions received will be published following the end of the consultation, unless requested otherwise.

Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Asset Management and Investment Funds
Link	ESAs consultation

European Union Updates

ESMA updates guidelines on funds' names using ESG or related terms

On 14 December 2023, ESMA published a [statement](#) updating its plans for the adoption of Guidelines on funds' names using ESG or sustainability-related terms (the "Guidelines").

While the scope of the Guidelines remains unchanged, ESMA has introduced:

- revised thresholds for sustainable investments;
- a new category for transition-related terms;
- separation of "E" from "S" and "G" terms; and
- measurability of impact and transition terms.

For further details please see link to our Simmons Insights Article of the proposed guidelines, [here](#).

Background

On 18 November 2022, ESMA launched a [consultation](#) on Guidelines on funds' names using ESG or sustainability-related terms, on which we reported [here](#). Since then, ESMA has considered the feedback received from stakeholders as well as the outcome of the AIFMD 2.0 and UCITS Directive reviews. The agreed amendments to the Guidelines are set out in the report linked below.

What's next?

ESMA intends to adopt the future Guidelines following the outcome of the review of the AIFMD and UCITS Directive and the expected entry into force of the new mandates.

The application date of the new Guidelines will be three months after the date of their publication on ESMA's website in all EU official languages.

Managers of new funds will be expected to comply with the Guidelines in respect of those funds from the application date. Managers of existing funds will be expected to comply with respect to those funds six months after the application date.

Update

1 October – 31 December 2023

Regional impact

Ireland, UK, EU and Global

Sector Focus

Financial Institutions

Link

[Second annual Report](#)

European Union Updates

ESG: client note 'Top 10 talking points from the ESAs' SFDR proposals'

As we reported at the time, on 4 December 2023, the ESA published their Final Report, containing draft RTS on the review of PAI and financial product disclosures in the SFDR Delegated Regulation.

Our client note summarises the Top 10 things that firms need to know about the Final Report.

- proposes material changes to the disclosures required under the existing SFDR RTS, which came into force on 1 January 2023, including: (i) the addition and the revisions of some PAI indicators, (ii) new decarbonisation disclosures, (iii) enhanced Do No Significant Harm (“DNSH”) disclosures, (iv) broader amendments to the Article 8 and 9 disclosure templates and (v) other technical adjustments.
- includes major changes to the RTS, which many are calling SFDR 1.5.

As the European Commission is likely to endorse the ESAs' draft measures, firms subject to the SFDR and, in particular, to the regimes covered by the RTS, will now need to engage closely with the new rules and their practical impact.

We anticipate that firms will again need to make a significant effort to implement the extensive range of newly proposed amendments to the RTS.

To help them, our client note examines the following key questions:

1. What is covered in the Final Report?
2. Which firms would be subject to the changes proposed in the Final Report?
3. The PAI regime
4. Amendments to the decarbonisation targets
5. DNSH disclosure
6. Simplification of the Articles 8 / 9 templates
7. Other technical adjustments
8. Financial products with investment options
9. ESAs open questions to the European Commission addressed in Final Report
10. What are the next steps and when would this come into force?

Update

1 October – 31 December 2023

Regional impact

Ireland, UK, EU and Global

Sector Focus

Financial Institutions

Link

[ESG: client note 'Top 10 talking points from the ESAs' SFDR proposals'](#)

European Union Updates

ESMA has updated its packaged retail investment and insurance products (“PRIIPs”) key information document (“KID”) Q&As document

On 5 December 2023, ESMA updated its PRIIPs Q&As adding new questions and answers to the following sections:

- Section I: General topics
- Section IIIA: Market risk assessment - Product categories
- Section VI: Performance Scenarios
- Section X: Multi-option products and
- Section XI: Investment funds

The Q&As document contains not only the views of the ESAs on the application or implementation of the PRIIPs Regulation and its Level 2 Delegated Acts but also the responses of the European Commission to questions on interpretation of EU Law. The Commission's responses highlighted in blue in the Q&A document.

Update	1 October – 31 December 2023
Regional impact	Ireland, UK, EU and Global
Sector Focus	Asset Management and Investment Funds
Link	PRIIPs Q&As

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