

Simmons & Simmons

Irish Legal & Regulatory Quarterly Update
1 April– 30 June 2021



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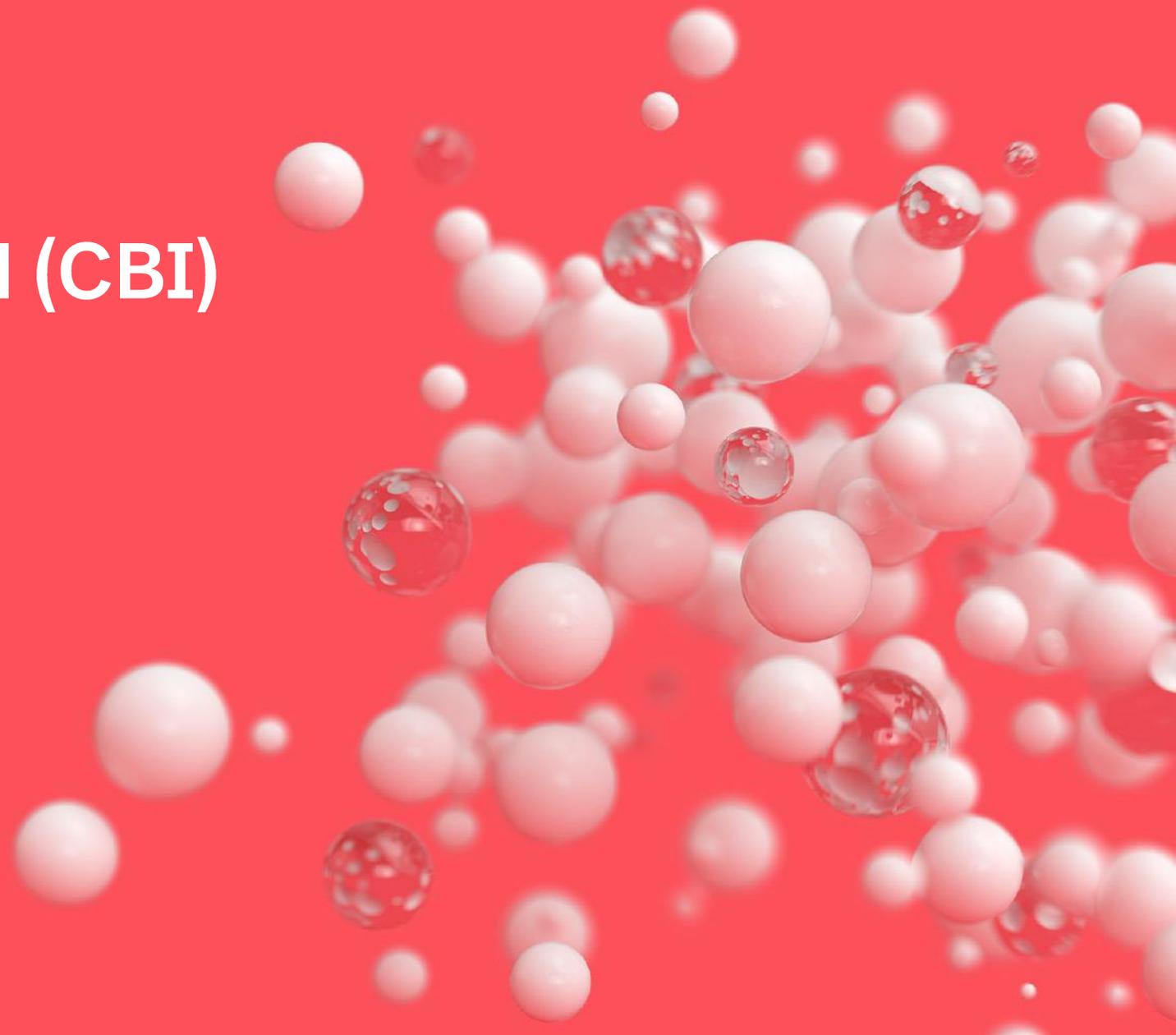
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Central Bank of Ireland (CBI) - Updates



Central Bank proposed outsourcing guidelines

The CBI has launched a consultation on outsourcing, which builds on the themes set out in its 2018 discussion paper.

Outsourcing has long been an area of particular focus for EU regulators, including the CBI. This is because of increasing prevalence of outsourcing across the financial services sector and its potential, if not effectively managed, to threaten the operational resilience of regulated financial services providers and the financial systems in which they operate.

In recent years, the CBI has carried out a large amount of work on outsourcing, including the publication of its discussion paper 'Outsourcing - Findings and Issues for Discussion' in November 2018 (the "[Discussion Paper](#)"), which set out the Central Bank's minimum supervisory expectations for regulated firms. The CBI has also adopted the relevant international standards on outsourcing, such as the EBA's updated guidelines which came into force in September 2019 (the "[EBA Guidance](#)").

The CBI has now published draft Cross-Industry Guidance on Outsourcing Risk (the "[Proposed Guidance](#)") as part of a consultation, which runs until July 2021.

For further information the link to our Simmons Insights Article and the CBI's Draft Cross-Industry Guidance on Outsourcing has been included below.

Update	1 April-30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Consultation Paper , Simmons Insights Article

Timing

July 2021 Consultation closes



Next steps

- The expectation is for firms to have a methodology for assessing the criticality or importance of a service, and to document and review that methodology. They are also expected to review the assessments which have been carried out, to ensure that they are still appropriate

Deadline for Investment Limited Partnership and Common Contractual Funds central register of beneficial ownership

Investment Limited Partnerships ("ILPs") and Common Contractual Funds ("CCFs") which were formed on or before 1 March 2021 are required to file information on the beneficial owners by 31 August 2021. "This information is to be held on a central register, pursuant to [Article 30\(3\)](#)" of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("[4AMLD](#)").

The 4AMLD required that the beneficial ownership of all ILPs and CCFs are held on a central register in each member state.

Information on the CBI's beneficial owners register and link to access the register has been included below.

Update	1 April-30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	CBI website

Timing

31 August 2021

ILPs and CCFs which were formed on or before 1 March 2021 must file their beneficial owners information



Fitness & Probity Interviews

The CBI recently published a [Fitness and Probity Interview Guide](#) (the "Guide") aimed at regulated financial services providers and those individuals proposed for pre-approval controlled functions ("[PCFs](#)").

The Guide sets out guidance in respect to the standard form assessment interview and specific interviews.

Previously the CBI on most occasions reviewed and approved PCF applications without requiring the applicant to attend an interview. However, it seems that PCF interviews have become more common.

As part of this interview, the CBI is requiring the applicant to explain their experience relevant to the competencies required by the particular PCF role. This includes (where applicable) explaining the nature of their participation in previous regulatory issues which the proposed PCF disclosed in their Individual Questionnaire (IQ) application forms.

For further information the link to the CBI's Fitness & Probity Interview Guide has been included below.

Update	1 April-30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Fitness & Probity Interview Guide



Next steps

- Firms and any of their incoming personnel intended to perform PCF functions should be familiar with the requirements outlined by the CBI's guide

Common supervisory action on UCITS liquidity risk management

The CBI published a "Dear CEO Letter" on 19 May 2021 (the "Letter") addressed to all Irish UCITS managers. The Letter elaborates on some of the results of European Securities and Markets Authority ("ESMA") UCITS Liquidity Risk Management ("LRM") 2020 Common Supervisory Action ("CSA"), which was recently conducted by ESMA together with the competent authorities of EU/EEA Member States, and requires all UCITS managers to conduct a review of their LRM practices, documentation, systems and controls.

As [previously reported](#) on 24 March 2021, ESMA published a public statement which sets out the findings from the CSA. At that time ESMA stated "In most cases, the exercise found that the level of compliance with the applicable rules on LRM was satisfactory with entities meeting their regulatory obligations."

For further information please see our Insights article and the CBI's "Dear CEO Letter" linked below.

Update	1 April-30 June 2021
Regional impact	Ireland and EU
Sector Focus	Asset Management & Investment Funds
Links	CBI "Dear CEO Letter" , Simmons Q1 2021 Irish Legal & Regulatory Update

Timing

Q4 2021 The review and respective board discussion should be actioned by the end of Q4 2021



Next steps

- The CBI expects all UCITS managers to conduct a specific review of their practices, documentation, systems and controls into their LRM frameworks taking into account the Letter, the CBI's [previous letter](#) issued earlier this year together with ESMA's public statement, and the results of the implementation of the [ESRB recommendations](#)

Update to the CBI's AIFMD and UCITS Q&As

On 24 June 2021, the CBI issued and published its 39th edition of the CBI's AIFMD Question and Answers ("Q&A") and well as its 31st edition of its UCITS Q&As.

AIFMD Q&A Updates

The 39th edition of the Q&A updates the Central Bank's previous Q&As ID 1021 and 1136 and includes 2 new Q&As, ID1143 and ID1144.

Additionally, QA ID 1021 has been updated to clarify the extent to which an Irish entity can perform duties for non-EU AIFs pursuant to Article 36(1)(a) of the AIFMD. Further, QA ID 1136 updates the types of AIF for which a Depository of Assets other than Financial Instruments ("DAoFI") can act.

New AIFMD Q&As

QA ID 1143, outlines the circumstances in which a DAoFI can accept an appointment from a non-EU AIFs pursuant to Article 36(1)(a) of the AIFMD to perform the duties set out in Article 21(7)-(9) of the AIFMD; and

QA ID 1144 confirms the Central Bank's position in relation to AIFs having a share class that makes distributions to charity. The Q&A confirms that this is permissible, subject to a number of conditions being met by the AIF.

UCITS Q&A

The 31st edition includes a new Q&A, ID 1099. The new Q&A, confirms that UCITS which have a share class that makes distributions to charity is permissible. However, this subject to a number of requirements being met by the UCITS.

A link to the CBI 's most up to date Q&As have been included below.

Update	1 April to 30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	AIFMD Q&A and UCITS Q&A

CBI's updated and revised Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector

The CBI published a revised version of Anti-Money Laundering and Countering the Financing of Terrorism Guidelines (the "Guidelines") on 23 June 2021. This revised version incorporates the legislative changes set out by the [Criminal Justice \(Money Laundering and Terrorist Financing\) \(Amendment\) Act 2021](#) ("CJA") which transposes the Fifth Anti-Money Laundering Directive into Irish law.

The Guidelines also include expectations set by the CBI's recent Anti-Money Laundering Bulletin published in October 2020 which concerns the application of transaction monitoring, and the European Banking Authorities Risk Factor Guidelines.

The CBI Guidelines provide for new areas of importance such as governance and consumer protection, as well as the much anticipated guidance relating to customer due diligence and beneficial ownership.

For further information please see links below.

Update	1 April-30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Anti-Money Laundering and Countering the Financing of Terrorism Guidelines, CJA 2021 , AML Bulletin 2020

Timing

23 June 2021 Revised Guidelines published



Annual Report 2020 & Annual Performance Statement 2020-2021

CBI's Annual Report 2020 was published on 2 June 2021, together with its Annual Performance Statement 2020-2021 (the "Report") CBI's supervisory strategy was adjusted due to COVID-19 and the notably unstable market in Q2 2020. The CBI's outcomes are as follows:

- Core risk assessments across key risks such as IT, governance and operational risk.
- Proactive engagement with supervised entities on their preparedness for Brexit and risks presented to their business models.
- The completion of the algorithmic trading thematic review to assess the governance and risk management frameworks in place for algorithmic trading firms.
- Enforcement actions to promote compliance with regulatory requirements.
- A skilled person review on risk management, compliance and control functions.
- The conclusion of the thematic review on Fund Management Company Effectiveness Guidance.

The thematic review was undertaken in three phases (questionnaire, desk based review and onsite inspections) and concluded in 2020 with the publication of a Dear Chair letter.

The Review found a significant number of FMCs have not fully implemented the framework for governance, management and oversight. CBI has now required prompt remediation by firms where shortcomings were identified. All other FMCs have been required to critically assess daily operations against the requirements and implement necessary changes to ensure full and effective embedding of all aspects of the Central Bank requirements.

For further information a link to the CBI's Report has been included below.

Update	1 April to 30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Annual Report and Performance Statement

Annual Report 2020 & Annual Performance Statement 2020-2021 (continued):

There were concerns about the systemic resilience of aspects of the money market fund ("MMF") sector at the height of the COVID-19 market stress in March and April 2020. A number of regulatory initiatives followed. EU institutions have begun organising their own work on MMFs to follow international developments, but tailored to the EU MMF sector and regulatory framework specifically. The CBI is an active participant in these discussions. The outcome of this regulatory work will be relevant ahead of the scheduled European Commission review of the MMF Regulation in the EU in 2022.

The CBI launched consultations on the following:

- Share class features of closed ended qualified investor funds ("CP132").
- New performance fee guidance for UCITS and certain types of retail funds ("CP134").
- Draft cross-industry outsourcing guidance for public consultation in 2021 ("CP138").

Sustainable finance is a growing priority for the CBI. The CBI:

- outlined its views on the challenges to development of sustainable finance and mitigation of sustainability risks, in response to the European consultation on Renewed Sustainable Finance Strategy;
- contributed to the development of EU regulation and guidance on sustainable finance at the European Supervisory Authority ("ESA");
- contributed to the development of ECB guidance on climate-related and environmental risk.

Update	1 April to 30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Challenges to development of sustainable finance and mitigation of sustainability risks , CP132 , CP134 , CP138

AML and Countering the Financing of Terrorism: CBI's Annual Performance Statement 2020 – 2021

CBI continued to undertake its robust risk-based supervision of regulated entities:

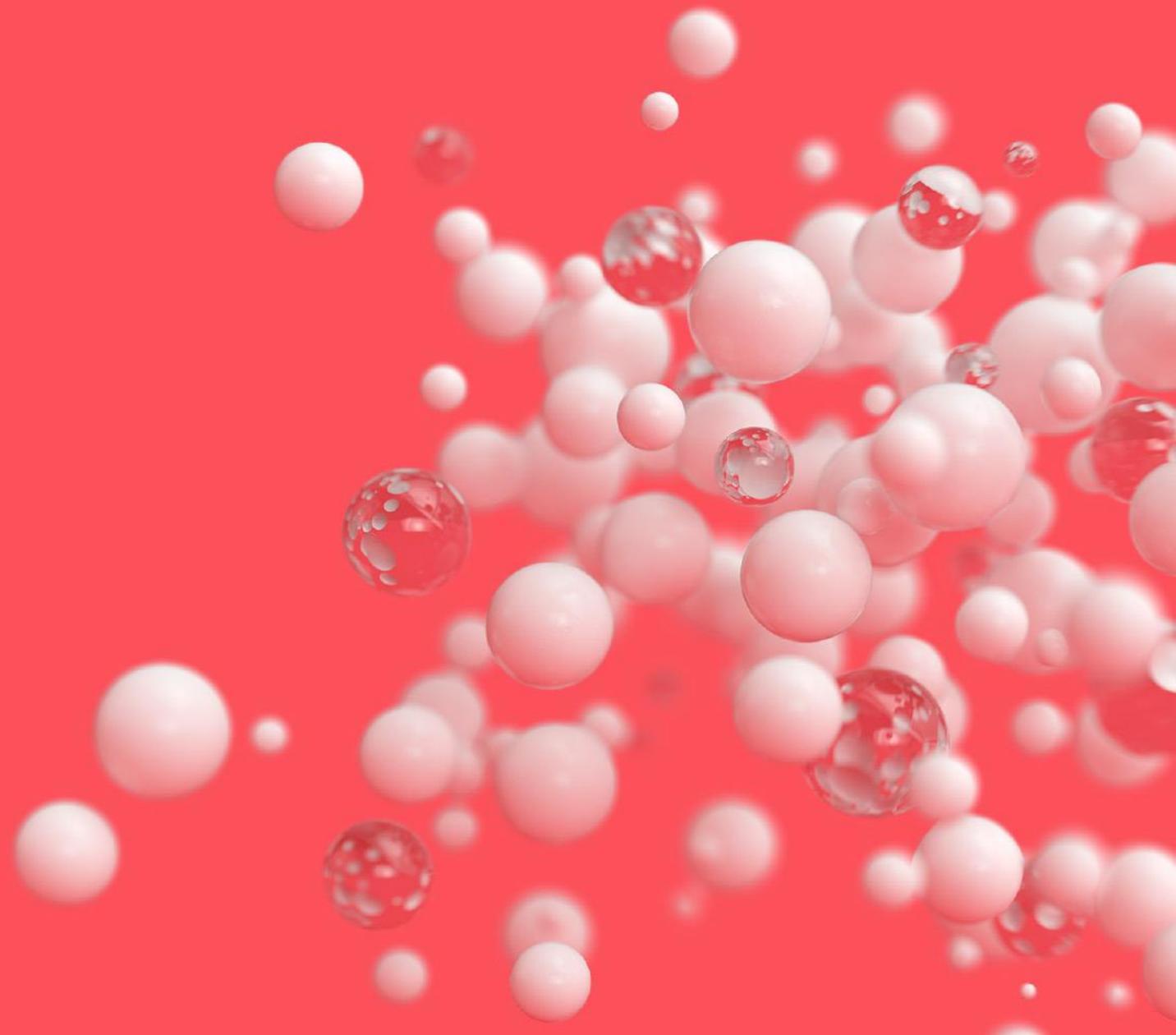
- The ESA issued guidelines to support supervisory cooperation and information exchange, and to create a common framework to ensure the effective oversight of cross-border groups from an AML/CFT stance. CBI established AML/CFT supervisory colleges, after attending in 2020.

To guide industry on areas of concern, the CBI issued a number of publications in 2020:

- A Dear CEO letter issued to Schedule 2 firms in respect of compliance under CJA 2010.
- CBI assisted Department of Finance and Department of Justice on the transposition into Irish law of 5AMLD. Another intention of the CBI was to establish a robust AML/CFT registration and supervisory regime for virtual asset service providers.
- CBI participated in the EBA's newly formed Standing Committee on AML/CFT and submitted its [formal response](#) to the European Commission's public consultation on its AML Action Plan.
- The CBI contributed to international AML/CFT policy through participated at the Financial Action Task Force, particularly on developments in the supervision and regulation of virtual asset service providers.
- On a domestic level, CBI continued its participation in the national AML/CFT committee, including contributing to the update of the risk assessment of legal persons and legal arrangements section of the National Risk Assessment.

Update	1 April to 30 June 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Formal Response

Irish Updates



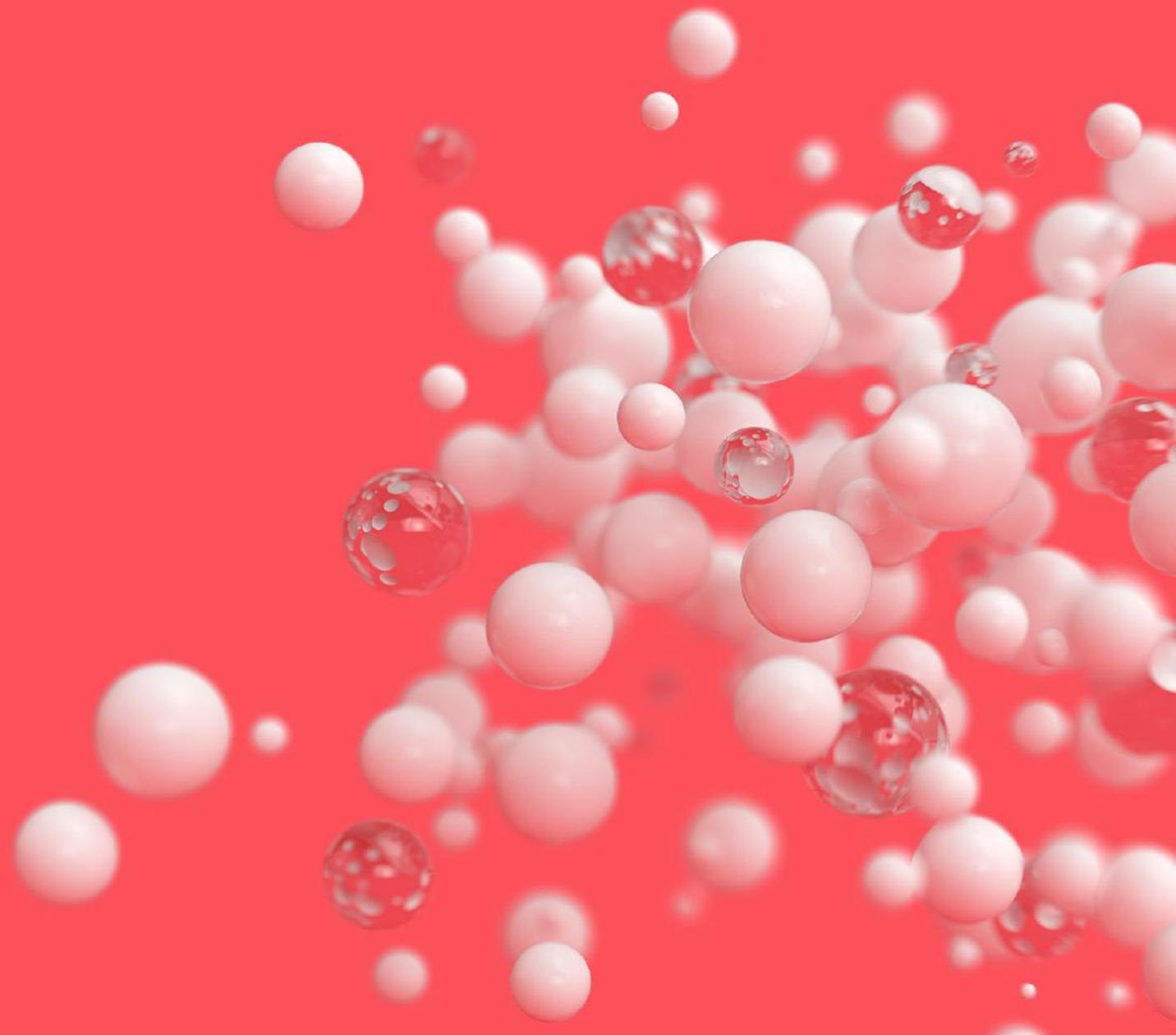
The Investment Limited Partnerships: A real contender for illiquid strategies

Ireland is a well-established domicile for liquid strategies and could now compete on the illiquid side. We look at the key issues and opportunities on this.

For further information the link to The Hedge Fund Journal's full article detailing Simmons & Simmons' leading drive for onshore investment vehicles in illiquid strategies has been included below.

Update	1 April-30 June 2021
Regional impact	Ireland and EU
Sector Focus	Investment Funds
Links	The Hedge Fund Journal Article

Irish Government



Investment Firms Directive

In a feedback statement published by the Department of Finance regarding its public consultation of Exercise of National Discretions under the Investment Firms Directive (the "IFD") it was outlined that the Minister intends to exercise the discretion set out in Article 32(5) of the Investment Firms Directive, setting a default threshold for opting out of the provisions relating to payment in instruments and deferral arrangements, at €300 million, where the relevant conditions set out in Article 32(5) are fulfilled.

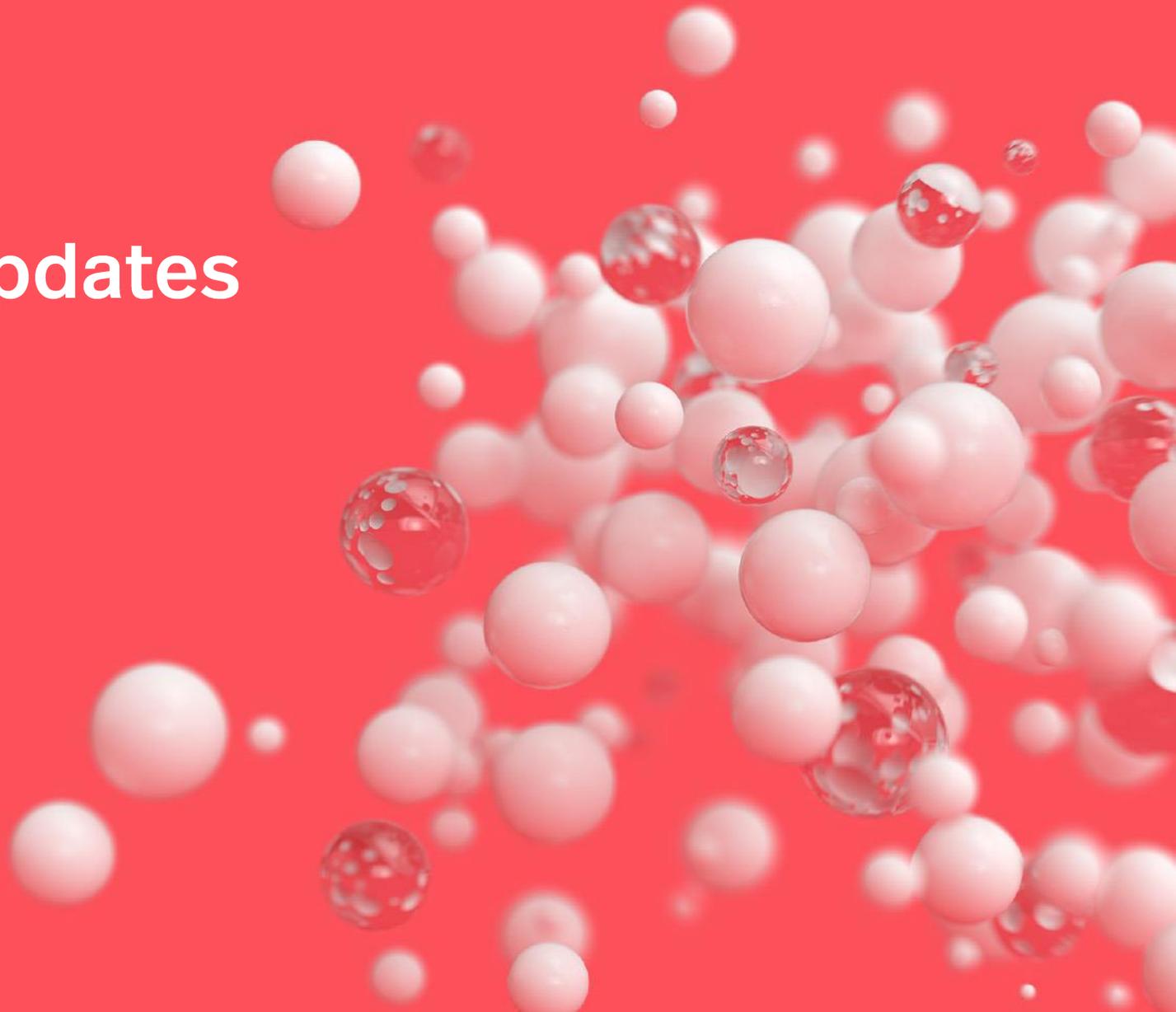
For further information the link to the CBI's Fitness & Probity Interview Guide has been included below.

Update	1 April-30 June 2021
Regional impact	Ireland and EU
Sector Focus	Asset Management & Investment Funds
Links	IFD Public Consultation Feedback Statement

Next steps

- IFD seeks to ensure that Firms such as Vanguard manage customer risk and market risk to a higher standard. The new framework will allow for a more tailored suite of regulations for different Firms depending on their classification/type

European Union (EU) Updates



SFDR: Commission likely to delay Level 2 RTS to 1 July 2022

We understand that the European Commission is preparing to delay application of the Level 2 measures under SFDR by a further six months.

In something of a surprise move, we gather that the European Commission is likely to propose pushing back application of the level 2 RTS under SFDR by a further six months so they would now apply from 1 July 2022.

This seems to be the result of the length and complexity of the RTS.

The Level 1 measures under SFDR came into effect on 10 March 2021 and the Commission made clear that it expected firms to comply with the spirit of the new rules from that date, even though the RTS were not yet in force at that point - the intention (until now) had been that these would apply from 1 January 2022.

It is unclear to us at the moment whether this move is instead of, or as well as, the Commission's long awaited response to the ESAs' request, made in their [letter of 7 January 2021](#), for urgent clarification in a number of areas as to how the SFDR should be interpreted.

We have to date seen no public confirmation of these points and will update clients further as soon as the position is more concrete.

For further information please see the link to the Commission's response letter to the ESA's request below.

Update	1 April to 30 June 2021
Regional impact	EU, EEA
Sector Focus	Financial Services Regulation, Asset Management and Investment Fund, Institutional Managers, Hedge Fund Managers
Links	Letter dated 7 January 2021

Speech at the AML Intelligence Boardroom

On 17 May 2021, the European Commissioner for Financial Stability, Financial Services and Capital Markets Union, Mairaid McGuinness gave a speech at the Anti-Money Laundering ("AML") Boardroom Series where she advised that the European Commission's (the "Commission") package regarding AML will be unveiled in July.

As part of its "AML package" the Commission has proposed a "more harmonised rules and a new AML Authority at EU level." This is to standardise the rules and supervision across the European Union.

The Commission is targeting:

1. Regulating AML requirements applicable to the private sector;
2. "increase the detail already included in the AML Directive such as Customer Due Diligence and beneficial ownership"; and
3. "setting an EU upper limit for cash purchases of €10,000".

As mentioned above as part of the Commission's reform is a new AML Authority which will have a number of different roles combining supervisory and Financial Intelligence Unit under the one body giving the EU/Commission a full picture.

For further information please see the link to Ms McGuinness' speech linked below.

Update	1 April to 30 June 2021
Regional impact	EU
Sector Focus	Financial Services Regulation
Links	Speech

Cross Border Distribution of Investment Funds Regulation

On 27 May 2021, ESMA issued its final report on marketing communication under the Regulation on cross-board distribution of funds (the "[Report](#)"). The Report contains the final set of guidelines (the "[Guidelines](#)") which funds marketing communications must satisfy. Namely:

1. Under Article 4(1) of the Regulation, marketing communications should be identifiable as such;
2. Under Article 4(1) of the Regulation, ensuring that all marketing communications describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and
3. Under Article 4(1) of the Regulation, the information included in marketing communications should be fair, clear and not misleading.

For further information please see link to ESMA's Final report below.

Update	1 April to 30 June 2021
Regional impact	EU
Sector Focus	Asset Management & Investment Funds, Private Funds, Financial Services Regulation
Legislation	Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings
Links	ESMA Final Report



Timing

- Competent authorities to indicate within 2 months if they will adopt the Guidelines
- The Guidelines take effect within 6 months of publication on ESMA's website

EMIR Transitional Period Extended

The European Commission has adopted a Delegated Regulation under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") extending the exemption for certain pension schemes from the EU EMIR clearing obligation until 18 June 2022.

ESG and Sustainable Finance

The European Commission has launched a consultation on a draft delegated regulation to be adopted under the Taxonomy Regulation specifying the content and presentation of information to be disclosed by undertakings subject to the Non-Financial Reporting Directive. The consultation closed on 2 June 2021.

Update	1 April to 30 June 2021
Regional impact	EU
Sector Focus	Financial Services Regulation

Timing

2 June 2021 European Commission consultation closed on 2 June 2021



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