Walkers

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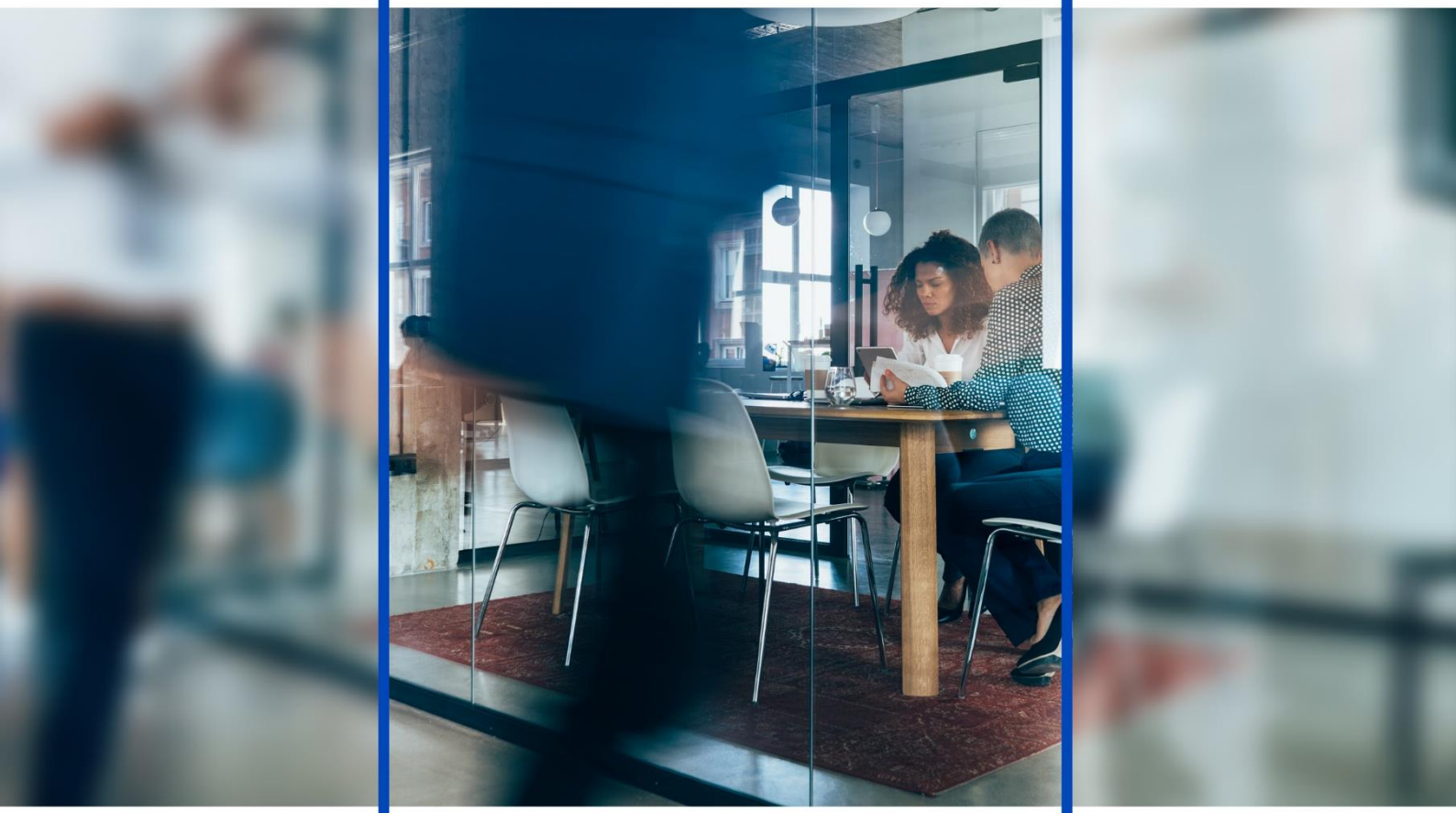
Asset Management and Investment Funds

Legal and Regulatory Quarterly Report

Covering the period
1 July 2024 to 30 September 2024



KEY DATES	
2024	
11 September 2024	Submission of UCITS & AIF marketing passporting notifications commenced via the Central Bank's online portal system.
30 September 2024	Applications to the UK overseas fund regime ("OFR") may commence for new UCITS without a landing slot.
1 October 2024	Applications to the UK OFR commence for standalone schemes registered under the temporary marketing permission regime ("TMPR").
1 November 2024	Landing slots for access to the UK OFR commence on an alphabetic basis for TMPR-registered umbrella schemes.
21 November 2024	ESMA guidelines on funds' names using ESG or sustainability-related terms apply for new funds.
16 December 2024	Commencement of new Central Bank daily investment fund return.
31 December 2024	Deadline for PRIIPs KIDs to calculate implicit transaction costs using the arrival price methodology in accordance with the PRIIPs Delegated Regulation.
2025	
1 January 2025	Reporting obligations commence under the Corporate Sustainability Reporting Directive (EU) 2022/2464 ("CSRD") for certain in-scope large companies (with their first annual CSRD-compliant financial reports to be published in 2026).
17 January 2025	Digital Operational Resilience Act to commence application.
21 May 2025	ESMA guidelines on funds' names using ESG or sustainability-related terms apply (for funds in existence at 21 November 2024).

This is a condensed version of our Asset Management and Investment Funds Legal and Regulatory Report setting out key developments during the quarter.

Quarter Highlights

In this quarterly edition of the Walkers legal and regulatory report, we identify a number of key highlights during a busy period for the various regulatory bodies as follows:

In a keenly awaited development, the European Commission (the "**Commission**") adopted regulatory technical standards pursuant to the European Long-Term Investment Funds ("**ELTIF**") Regulation ((EU) 2015/760) (**section 1.1**).

ESMA published two consultation papers related to the use of liquidity management tools ("**LMTs**") by managers of open-ended AIFs and UCITS pursuant to the new liquidity management rules in **AIFMD II**, which will be interest to fund management companies and their delegates (**section 1.2**).

ESMA confirmed the timing for the application of its **Guidelines on funds' names** using ESG or sustainability-related terms which will commence on 21 November 2024, with a further transitional period of six months for compliance by funds in existence on that date **(section 4(a))**. The **Central Bank of Ireland** (the "**Central Bank**") has now established a streamlined filing process during the transition period to facilitate the implementation of the Guidelines for funds that are obliged to change their names. At the same time the Central Bank will close the "fast track" process it introduced in February 2023, to facilitate updates to pre-contractual disclosures to provide information to investors on investments in taxonomy-aligned fossil gas and nuclear economic activities (**section 2.4(a)**).

The **Central Bank** published the outcome of an independent review of its **fitness and probity ("F&P")** regime accepting all of the recommendations and pledging to implement the outcome of the review by the end of 2024 **(section 2.8)**.

The **Central Bank** also published a speech where Patricia Dunne outlined the suite of **legislative and regulatory initiatives** impacting the funds sector and the Central Bank's approach to preparing for implementation of the new regulatory rules (**section 2.10(a)**).

The **Department of Finance** published its second feedback statement on the proposed **participation exemption** for foreign dividends (**section 3.1**).

In the **UK**, the FCA published its final rules regarding the **overseas fund regime** (**"OFR"**), in advance of the OFR gateway opening for EEA UCITS (excluding money market funds ("**MMFs**")) seeking long-term marketing access to retail investors in the UK. In response the Central Bank has published guidance on the process for post-authorisation changes to Irish UCITS' offering documentation to comply with the FCA guidance (section **(2.4(b)) and (3.6)**).

In **sustainable finance** developments, the ESAs published a number of Q&As clarifying the practical application of measures under Regulation (EU) 2019/2088 ("**SFDR**") and the Commission Delegated Regulation (EU) 2022/1288 (the "**SFDR Delegated Regulation**") (**section 4(c)**). ESMA also put forward an opinion setting out its long-term vision on the future functioning of the EU's sustainable finance framework (**section 4(a)**).

Corporate sustainable reporting developments continue apace with Ireland transposing **CSRD** into national law (**section 4(e)**).

1. AIFMD & UCITS DEVELOPMENTS

1.1 Commission adopts delegated regulation on the ELTIF Regulation *(This is a further update to section 4.3(a) of the quarterly report covering the second quarter of 2024)*

On 19 July 2024, the European Commission (the "**Commission"**) adopted a delegated regulation and accompanying annexes containing its regulatory technical standards ("**RTS**") supplementing Regulation EU 2015/760, as amended by Regulation 2023/606/EU (the "**ELTIF Regulation**").

The RTS specify detail on a number of features mandated under the ELTIF Regulation, in particular:

- the circumstances in which the life of an ELTIF is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF (including the minimum holding period, choice of liquidity management tools ("**LMTs**"), notice periods and maximum percentage of liquid assets that can be redeemed);
- the circumstances for the use of a liquidity matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors;
- the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging risks inherent in certain investments; and
- the ELTIF costs disclosure.

The key features of the adopted RTS include, but are not limited to, provisions on the following:

Notice periods and redemption frequency *(open-ended ELTIFs)*

The Commission's re-working of ESMA's original proposals constitutes its proportional approach to calculating allowable redemptions from an open-ended ELTIF. Discretion is provided in the RTS for ELTIF managers to calibrate the gating of redemptions either on the basis of:

(i) the redemption frequency and the maximum length of the notice period, which represents the notice period (per the tables in annex I) or, alternatively,
(ii) on the basis of the redemption frequency and the minimum percentage of liquid assets (per the table in annex II).

Under both methodologies the manager of the ELTIF may consider introducing a minimum notice period as part of the redemption policy without the mandating of a minimum notice period under the RTS. Significantly, in determining the maximum redemption gate ELTIF managers may apply the sum of UCITS eligible assets at the redemption date, as well as the expected cash flow forecasted on a prudent basis over 12 months. ELTIF managers may only take into account those expected positive cash flows for which the ELTIF manager can demonstrate that there is a high degree of certainty that they will materialise and shall not consider as expected positive cash flows the possibility that the ELTIF can raise capital through new subscriptions.

Minimum holding period *(open-ended ELTIFs)*

While a minimum holding period can enable managers of ELTIFs which offer redemption facilities to complete the investments of its capital contributions, the RTS do not prescribe the duration of the minimum holding period. Instead, the manager of an ELTIF in considering the circumstances of the ELTIF should determine the requirement for any minimum holding period based on a set of certain criteria.

LMTs *(open-ended ELTIFs)*

The RTS clarify that the manager of an open-ended ELTIF is not required to, but may at its discretion and in accordance with the redemption policy, select and implement 4321from among any of the following anti-dilution LMTs:

(a) anti-dilution levies;
(b) swing pricing; and

(c) redemption fees.

The manager of the ELTIF may also additionally select and implement other LMTs. The manager of a retail investor ELTIF should provide the competent authority of the ELTIF, upon request of that authority, with the information on the choice of such other LMTs and their appropriateness in the context of the ELTIF.

Costs

The RTS also provides for common definitions, calculation methodologies and presentation formats to ensure a common approach in relation to the disclosure of the costs (borne directly or indirectly) by investors in an ELTIF.

Next steps

Following adoption by the Commission, a three-month scrutiny period by the co-legislators has been triggered following which the RTS may be published and enter into force the day after its publication. The adoption of the RTS has been keenly awaited and the approach taken by the Commission demonstrates a recognition of those concerns expressed by stakeholders as well as an effort to mitigate these concerns while also maintaining the protection of retail investors, ensuring the fulfilment of financial stability-related objectives of the capital markets union as well as maintaining the initial momentum behind the ELTIF 2.0 regime.

Walkers' Asset Management & Investment Funds team have published a recent advisory assessing the RTS, as well as its implications and next steps.

1.2 Corrigendum to the ELTIF Regulation

On 17 September 2024, a Corrigendum to the ELTIF Regulation (EU) 2023/606 was published in the official journal of the EU (the "**OJ**").

The text corrects a typographical error in Article 19 of the consolidated ELTIF Regulation entitled *'Secondary Market'* (replacing a number of references to *'existing... investors'* with *'exiting... investors'*).

1.3 ESMA consultations on AIFMD II LMTs *(This is a further update to section 1.1 of the quarterly report covering the first quarter of 2024)*

On 8 July 2024, ESMA published the following consultations on LMTs for funds pursuant to mandates in Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending AIFMD (2011/61/EU) and the UCITS Directive (2009/65/EC) relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds ("**AIFs**") ("**AIFMD II**").

- Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs (the "**Draft Guidelines**"). The Draft Guidelines provide guidance on how managers should select and calibrate LMTs in the light of their investment strategy, their liquidity profile and the redemption policy of the fund. The draft guidelines are set out in Annex IV to the consultation paper.

- Draft Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive (the "**Draft RTS**"). The draft RTS, among other things, define the constituting elements of each LMT, such as calculation methodologies and activation mechanisms. The Draft RTS are set out in Annex IV and Annex V to the consultation paper.

The Draft Guidelines and Draft RTS will apply to alternative investment fund managers ("**AIFMs**") managing open-ended AIFs and UCITS and are to be read together. ESMA notes that the aim of the draft RTS and guidelines is to promote convergent application of the Directives for both UCITS and open-ended AIFs and make EU FMCs better equipped to manage the liquidity of their funds, in preparation for market stress situations. In addition, they clarify the functioning of specific LMTs, such as the use of side pockets, which is a practice that currently varies significantly across the EU.

AIFMD II requires FMCs of open-ended AIFs and UCITS to select at least two LMTs from those set out in points 2 to 8 of Annex V of the AIFMD and Annex IIA of the UCITS Directive (these lists are identical), having assessed that suitability of those LMTs in relation to the pursued investment strategy, the liquidity profile and the redemption policy of the fund. FMCs may also decide to use other tools (than the LMTs referred to in AIFMD II) to manage the liquidity of a fund. However, when doing so, these other tools shall not be considered as LMTs for the purpose of complying with AIFMD II. One example noted by ESMA of these other tools is "soft closure", where a fund is closed to new subscriptions when the size of the fund exceeds a pre-determined level, while still allowing investors to redeem. The Draft RTS do not mandate the conditions under which the LMTs selected shall be activated (except for side pockets), and ESMA identifies its expectations and instances that may lead to the activation of all LMTs.

The Draft LMT Guidelines outline how FMCs should select (selection relates to other LMTs only, as funds need to always be able to implement suspension of dealing procedures and side pockets without pre-selecting those) and calibrate LMTs, in light of their investment strategy, their liquidity profile and the redemption policy of the fund.

LMTs should be considered an essential (but not the sole) element of the fund's overall liquidity management framework, which should incorporate relevant provisions related to the fund's structure, investment strategy and operational processes and procedures to manage liquidity. The primary responsibility for liquidity risk management, including for the selection, calibration, activation and deactivation of LMTs remains with the AIFMs (acting on behalf of open-ended AIFs) or the UCITS respectively.

The Draft Guidelines also recommend that, in the selection of the two minimum mandatory LMTs, FMCs should consider, where appropriate, the merit of selecting at least one quantitative-based LMT (i.e, redemption gates and extension of notice period) **and** at least one anti-dilution (or price-based tool ("**ADT**") (i.e. redemption fees, swing pricing, dual pricing, anti-dilution levies)), taking into consideration the investment strategy, redemption policy and liquidity profile of the fund and the market conditions under which the LMT could be activated. In this context, FMCs may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions (for instance, one ADT to use for normal market conditions and one quantitative LMT to be used under stressed market conditions).

Investor disclosure

The Draft Guidelines emphasise appropriate disclosure of available LMTs in the fund documentation, and/or periodic reports (e.g. a periodic report would provide an ex-post overview of activation whereas fund rules and prospectuses would state the conditions for activating am LMT). The implications of LMTs in terms of liquidity costs or access to their capital should also be disclosed. ESMA has noted that such disclosures should help to normalise the use of LMTs and increase the understanding of their functioning by investors, while the timing and detail of disclosure should balance any unintended consequences such as preventing any first mover advantage. ESMA also suggests that it may be helpful for funds to disclose periodic ex-post information on the historical use of LMT to investors via the fund's financial statements or via a website.

Governance

AIFMD II requires that detailed policies and procedures for the activation and deactivation of any of the selected LMTs and the operational and administrative arrangements for the use of such LMT must be implemented. The selected LMTs and the detailed policies and procedures must be communicated to the national competent authority ("**NCA**") of the UCITS or AIFM. AIFMD II requires that an AIFM or UCITS must notify its home state NCA, without delay, where it activates or deactivates suspension of subscriptions, repurchases and redemptions or any of the 'selected' LMTs in a manner that is not in the ordinary course of business as envisaged in the AIF/UCITS rules or instruments of incorporation.

In respect of governance principles and following IOSCO recommendations for liquidity risk management for collective investment schemes the Draft Guidelines note that the internal governance arrangements should at least include the following elements:

(i) objective criteria (e.g. activation thresholds) for the application of LMTs;
(ii) methodology, including calibration;
(iii) parties involved (e.g. senior management, risk management, etc);
(iv) source of information and data used;
(v) controls;
(vi) documentation of decisions made;
(vii) escalation processes; and
(viii) oversight by the governing body.

The Draft Guidelines also note that depositaries should set up appropriate verification procedures on the FMC documented procedures for LMTs.

The consultations seek feedback from stakeholders before 8 October 2024. ESMA will deliver final reports outlining the final RTS and LMT Guidelines to the Commission by 16 April 2025. ESMA will also consult on draft RTS to determine the requirements that loan-originating AIFs must comply with to maintain an open-ended structure pursuant to AIFMD II at a later stage.

The Walkers' Asset Management & Investment Funds 101 advisory series considers a number of key changes for the asset management industry under AIFMD II. In the first advisory of the series our Irish Asset Management and Investment Funds team explain the new harmonised framework for loan originating activities across the EU and in the second instalment of the series, we focus on the new legal framework provided under AIFMD II in relation to the use of LMTs.

1.4 ESMA updated Q&As

On 12 July 2024, ESMA has published the following updated Q&As, including on AIFMD and the UCITS Directive:

AIFMD Q&A

Initial capital and additional own funds

Q&A 2227 notes that internally managed AIFs and self-managed UCITS investment companies should adopt procedures and systems to ensure compliance at all times with the requirements related to own funds per Article 9 of AIFMD and Articles 7 and 29 of the UCITS Directive.

The Q&A clarifies the initial capital and the additional own funds should not be included in the fund's net asset value ("**NAV**"), i.e. kept separate from the collective investment undertaking's assets. As a result, an investment company's own funds should be neither invested in accordance with the funds' investment strategy nor distributed to the redeeming investors, but instead they should be preserved to cover exposures from the investment company's professional liability and they should always remain within the limits of the minimum capital requirements.

Notification upon establishment of a branch

Q&A 711 notes that when an AIFM intends to carry out in another member state solely the functions referred to in point 2(c) of Annex I to AIFMD, such as real estate administration activities either directly or through establishing a branch, a notification to the competent authorities of its home member state under Article 33(2) and (3) AIFMD is not required in such instances.

The functions listed in point 2 of Annex I AIFMD are ancillary to the activities referred to in point 1 of Annex I to AIFMD and cannot be exercised independently from those. However, the AIFM may still need to provide information to the competent authorities of its home member state under different legal bases (e.g. Article 7(2)(c) on the requirement to provide upon authorisation a program of activity setting out the organisational structure of the AIFM).

Q&A on the UCITS Directive

Derogation for newly authorised UCITS

Q&A 601 confirms that under Article 57(1) of the UCITS Directive the six-month period member states may allow recently authorised UCITS to derogate from Articles 52 to 55 runs from the date of authorisation of the UCITS, regardless of whether the UCITS launches immediately after authorisation or at a later stage.

2. CENTRAL BANK UPDATES

2.1 Cross-border passporting process update

On 20 August 2024, the Central Bank communicated to Irish Funds that the following cross-border passporting submissions are with effect from 11 September 2024, required to be submitted via the Central Bank's online portal (the "**Portal**") (instead of via email):

- UCITS outward marketing submissions - notifications and de-notifications;
- Article 32 AIFMD outward marketing submissions, i.e., Irish AIFMs marketing EU AIFs in EU member states (excluding Ireland) – notifications and de-notifications; and
- Article 31 AIFMD inward marketing submissions, i.e., Irish AIFMs marketing EU AIFs in Ireland - notifications and de-notifications.

Note that any passporting submissions not listed above will continue using the relevant email mailbox submission process.

Third party entities appointed to make passporting notifications/de-notifications must have relevant Portal permissions assigned to them by the relevant Portal Administrator for UCITS and AIFMs. To this end the Central Bank notes that Irish AIFMs which intend to passport EU AIFs, as well as any legal advisors and/or other filing representatives to which the Portal tasks will be delegated, should complete the Portal registration process where they are not already registered. The nominated Portal Administrator for each EU AIF should complete the link on the Portal to the relevant EU AIF.

On 9 September 2024, the Central Bank published step by step guidance on submitting marketing passporting submissions (notifications and de-notifications) via Portal in respect of Articles 31 & 32 of AIFMD as well as UCITS passporting.

2.2 Notification of cross-border activities (*updated*) *(This is a further update to section 1.2 of the quarterly report covering the first quarter of 2024)*

On 14 July 2024, the Central Bank published on its website updated notification and de-notification letters for cross-border activities under the AIFMD and the UCITS Directive in order to align its process with the following technical standards as regards notification to NCAs of cross-border activities:

- Commission Implementing Regulation (EU) 2024/910 of 15 December 2023 laying down implementing technical standards for the application of Directive 2009/65/EC of the European Parliament and of the Council with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Commission Regulation (EU) No 584/2010 (C/2023/8700).

- Commission Implementing Regulation (EU) 2024/913 of 15 December 2023 laying down implementing technical standards for the application of Directive 2011/61/EU of the European Parliament and of the Council with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters (C/2023/8707).

The previous templates are no longer accepted.

2.3 F&P individual questionnaire ("**IQ**") template (updated September 2024)

On 23 September 2024, the Central Bank published an updated version of its IQ template for regulated financial service providers.

In addition to certain administrative revisions providing additional optionality and pre-population of certain answers based on responses, the updated IQ template (incorporating the F&P profile) reflects a number of amendments to existing questions. These include removing the question on the ethnic group of an applicant, now noting that the Central Bank collects gender data for statistical purposes only. The wording in Section 5.19 of the IQ is now broadened to include the term 'investigated' as follows: "Have you ever, in any jurisdiction, been investigated, prosecuted or convicted of an offence…"

2.4 Markets updates during the period

(a) *(Issue 8 of 2024) (This is a further update to section 4.14(e) of the quarterly report covering the first quarter of 2023 as well as sections 3.7 and 4.1 of this report)*

On 27 September 2024, the Central Bank published its latest markets update (issue 8), containing the following updates:

- Process clarifications for UCITS and AIFs following publication of ESMA's guidelines on funds' names using ESG or sustainability-related terms.

On 27 September 2024, the Central Bank published its process clarification with respect to the streamlined process for UCITS and AIF fund name changes and corresponding updates to fund prospectuses, supplements and SFDR annexes based on the requirements set out within the ESMA's guidelines on funds' names using ESG or sustainability-related terms (the "**Guidelines"**). The streamlined filing process via the dedicated SFDR mailbox SFDR@centralbank.ie is limited solely to name changes that are required for compliance with the Guidelines. For other SFDR-related amendments or re-classification filings the Central Bank's standard-post authorisation processes apply.

UCITS management companies and AIFMs will be required to certify compliance with the Guidelines via an attestation that must be submitted to the Central Bank with the request seeking a change of name of the UCITS or AIF.

The attestation should state that:

- the amendments made are in accordance with the Guidelines; and
- no other amendments have been made to the fund documentation.

Following 21 May 2025, i.e. the end of the transition period, the streamlined filing process will no longer be available.

Walkers' Asset Management & Investment Funds team have published an advisory outlining the Central Bank's streamlined process contained in the process clarification and outlining the key requirements in the Guidelines (as further outlined at section 4.1 of this report).

- Closure of Streamlined Filing Process for Pre-Contractual Document Updates based on the SFDR Level 2 Requirements

Effective from 18 October 2024, the streamlined filing process which was established by the Central Bank on 20 February 2023 obliging fund management companies with Article 8 or Article 9 funds to make the required disclosures including using updated pre-contractual annexes in order to include information on investments in taxonomy-aligned fossil gas and nuclear economic activities (based on the requirements of Delegated Regulation (EU) 2023/363 amending and correcting the RTS laid down in Delegated Regulation (EU) 2022/1288 ("**SFDR Level 2**")) will close.

Any submissions related to SFDR Level 2 implementation which are filed via SFDR@centralbank.ie after this date will not be noted and must be submitted in line with standard post-authorisation processes.

- Change of Process for Submission of UCITS Mergers, AIF Amalgamations and Applications for Clearance of Investment Managers and Non-EU AIFMs

Effective from 1 October 2024, there will be a change to the process for the submission of:

- applications for clearance of Investment Managers and non-EU AIFMs; and
- applications for UCITS mergers and AIF amalgamations.

These applications will move to submission via the Portal only.

(b) *(Issue 7 of 2024)*

On 13 September 2024, the Central Bank published its latest markets update (issue 7), containing the following updates:

- RE: MiFIR Review - DPE Regime
- Publication of Feedback Statement to Discussion Paper 11

This update is covered in section 2.6 of this report.

- End of the implementation period for the macroprudential measures for GBP-denominated LDI funds
- Implementation of the Overseas Funds Regime (OFR) by the FCA – Requirements for Irish Authorised UCITS (with the exception of Money Market Funds)

The Central Bank notes that Irish authorised UCITS (with the exception of MMFs) wishing to avail of the OFR may be required to make changes to fund offering documents in accordance with the FCA guidance.

The Central Bank notes these amendments must be made to the prospectus and submitted to the Central Bank as a post-authorisation update. There are two options which a UCITS may avail of in this regard as follows:

1) the relevant disclosure may be added to the UK country supplement and filed via the Portal using the "*UCITS/AIF Country Supplement*" Request Change; or
2) by submitting the amended documents to the Central Bank's Funds Post-Authorisation team via the Portal using the "*UCITS/RIAIF: Prospectus/Supplement review – No new sub-funds*" Request Change. This option can only be used if the main body of the fund offering document is amended.

As the Central Bank does not prior review country supplements, option 1 is essentially a fast-track filing. However, as option 2 involves amendments to the main body of the prospectus, as opposed to just the country supplement, any such submissions will be subject to prior review and will therefore be a lengthier process. This timing should be factored into timelines for the submission of the OFR application to the FCA.

The remaining updates of relevance on this issue are covered in our previous reports.

2.5 Investment fund statistics Q2 2024

On 27 August 2024, the Central Bank published its Investment Fund Statistics for Q2 2024, which show NAVs of Irish regulated funds increased for the seventh successive quarter, by €160bn to €4,482bn, in Q2 2024, driven by positive revaluations of €69bn and transaction inflows of €91bn.

On 12 September 2024, EFAMA also published its European Quarterly Statistical Release for Q2 2024, which shows that net assets of UCITS and AIFs rose by 2.2% in Q2 2024. The report highlights that long-term UCITS and AIFs recorded net inflows of EUR 119 billion in Q2 2024, compared to EUR 85 billion in Q1 2024. The release notes that net outflows from SFDR Article 9 funds continued, but long-term Article 8 fund flows registered the same level of net sales as in Q1 2024.

2.6 Feedback statement on an approach to macroprudential policy for investment funds *(This is a further update to section 2.1 of the quarterly report covering the third quarter of 2023 and section 3.6 of the quarterly report covering the second quarter of 2024)*

On 23 July 2024, the Central Bank issued a feedback statement to its July 2023 discussion paper on an approach to macroprudential policy for investment funds. The Central Bank had sought feedback in the discussion paper on the:

- channels through which investment funds can generate systemic risk;
- current regulatory framework for investment funds;
- key proposed objectives and principles of macroprudential policy for investment funds;
- design and deployment of macroprudential tools for investment funds; and
- considerations for operationalising a macroprudential framework for investment funds.

The feedback statement provides an overview of the submissions and a discussion of the key issues articulated by the respondents as well as the Central Bank's response to written feedback received. In addition, the statement also outlines a summary of its bilateral stakeholder engagement and its international non-bank financial intermediation ("**NBFI**") conference held on the topic in May 2024.

The Central Bank emphasises that a macroprudential policy imposing strict limits is *not appropriate* for the funds sector – equally a "one-size-fits-all approach" to liquidity regulation should be avoided given the framework for banks are inappropriate for the funds sector. The feedback statement acknowledges that investment funds are just one part of the financial system and not the sole source of systemic risk outside the banking sector and the development of any macroprudential framework will take time and will need to adapt and evolve with the funds sector. In addition, any new macroprudential rules should be bespoke to the nature of the systemic risk from fund cohorts.

Next steps

The main area of focus for the Central Bank will be to actively contribute to the various international workstreams on developing the macroprudential approach to investment funds, including implementation of the FSB recommendations and IOSCO guidance on liquidity management for open-ended funds. The Central Bank is continuing to undertake work domestically to understand better how price-based LMTs are used by Irish-domiciled funds.

A near term focus for the Central Bank is its contribution to the Commission's consultation on a macroprudential framework for NBFI which has a deadline for responses of 22 November 2024.

On the domestic front, the Central Bank will continue to evaluate the implementation of both macroprudential measures already introduced, namely for Irish authorised property funds and Irish authorised GBP-denominated LDI funds. It will also continue to actively monitor the sector for evolving financial vulnerabilities and to deepen its understanding of the nature and magnitude of systemic risk across different fund cohorts, through ongoing analysis and research.

2.7 Q&A on IAF conduct standards and the Senior Executive Accountability Regime ("**SEAR**") *(This is a further update to section 3.4 of the quarterly report covering the second quarter of 2024)*

On 1 July 2024, coinciding with the application date of SEAR for executive pre-approval controlled function ("**PCF**") roles in certain in-scope firms, the Central Bank published a series of answers to Questions from Stakeholders ("**Q&A**") which are integrated into the individual accountability framework ("**IAF**").

Conduct Standards

The ("**Q&A**"), includes responses clarifying that:

- the IAF Conduct Standards extend to individuals in controlled function ("**CF**") roles providing services on a freedom of services basis;

- where an individual in a group entity can effectively direct/exercise a significant influence on key aspects of the business of a regulated financial services provider ("**RFSP**"), they will be a CF-1 and therefore, they will be subject to both the common and additional conduct standards as CF-1 role holders of the RFSP. The response does note that, it is not typically anticipated that individuals in group entities will ordinarily exercise such significant influence; and

- that it is permissible for the delivery of IAF training to be facilitated by a third party in a situation where CF and/or PCF roles are outsourced.

SEAR

The Central Bank has also made clarifications in respect of the allocation of prescribed responsibilities ("**PRs**") under SEAR. The Q&A clarifies that:

- with a view to ensuring that firm have the flexibility to allocate responsibilities in a manner that accommodates different business models, the Central Bank has confirmed that it does not intend to be prescriptive with regard to the allocation of PRs to specific PCF role holders. However, where specific sectoral guidance has been issued that may be of relevance, this should be taken into account.

- the Central Bank confirmed that it is not necessary for firms to allocate a PCF-52 (Head of AML/CFT Legislation Compliance) role in order to allocate PR20 (responsibility for managing the AML/CTF function).

- with SEAR coming into effect for in-scope firms from 1 July 2024, the Central Bank adds that in-scope new entrants must now submit a statement of responsibilities with their PCF application / clarifying expectations on allocation of PR34 (responsibility for managing the steering committees).

2.8 Independent review of the fitness and probity ("**F&P**") regime *(This is a further update to section 2.3 of the quarterly report covering the second quarter of 2024)*

On 11 July 2024, the Central Bank published the outcome of an independent review of its F&P regime (hereafter, the "**Review**"). The Review was conducted by former Chair of the Supervisory Board of the European Central Bank, Mr Andrea Enria, and it evaluated the existing F&P framework, implemented over a decade ago. The F&P regime is aimed at ensuring that individuals in key roles within regulated entities in the financial sector are fit and proper to carry out their responsibilities.

The Review was aimed at ensuring that the F&P framework remains effective and in-line with international best practices. It was conducted in response to an evolving regulatory landscape, most notably the 2024 Irish Financial Services Appeals Tribunal decision in *AB v the Central Bank of Ireland* (the "**AB Case**"), which raised concerns about the effectiveness, fairness and transparency of the Central Bank's handling of F&P applications.

The review concludes that the conduct of the F&P regime at the Central Bank is broadly in line with peer regulators in different jurisdictions across a number of dimensions:

- standards are comparable and robust supervisory judgement is utilised;
- statistics on outcomes (approvals, withdrawals of applications, refusals) are in line with other supervisory authorities and do not signal either a particular stringency or leniency of the process; and

- timelines are well aligned with the target service standards and generally faster than in other countries.

However, the review also highlighted the need for targeted improvements in process consistency across firms of different sizes which are operating in different financial sectors. The recommendations focus on three areas: clarity of supervisory expectations, governance of the process, and the fairness, efficiency and transparency of the process.

The recommendations of the review have been accepted by the Central Bank and will be implemented over the coming months and should be in place by the end of the year. The Central Bank intends to create a new unit which will centralise all F&P activities which are currently dispersed across the Central Bank.

The Walkers Asset Management & Investment Funds and Regulatory & Risk teams have recently published an advisory entitled *'Regulatory Update: Individual Accountability Landscape and the outcome of the Review of the F&P Regime'*, which discusses the recommendations issued as part of the Review as well as the responses issued by the Central Bank on IAF conduct standards and SEAR (outlined at section 2.7 of this report).

2.9 Crypto-asset service providers ("**CASPs**") authorisation overview process

On 10 September 2024, the Central Bank published a frequently asked questions ("**FAQ**") page in relation to CASP applications under the Regulation (EU) 2023/1114 Markets in Crypto Assets Regulation *((EU) 2023/1114)* ("**MICA**"). The FAQ sets out the Central Bank's expectations for authorisation and supervision of CASPs operating within the EU from 30 December 2024. The FAQ also provide a helpful overview of the ESAs level 2 and 3 texts providing greater granularity on MiCA requirements for CASPs.

The Central Bank will in due course update this webpage regarding the authorisation and notification forms.

2.10 Central Bank speeches

(a) *'A tapestry of regulatory change'*

On 11 July 2024, the Director of Securities and Markets Supervision, Patricia Dunne delivered remarks entitled "*A tapestry of regulatory change"* concerning changes in the investment fund regulatory landscape which she described as "an almost unprecedented suite of legislative and regulatory initiatives spanning the whole investment fund ecosystem".

Key takeaways from the remarks include the following:

On ELTIFs, Ms Dunne outlined the expectation that ELTIF Regulation should help provide retail investors' greater access to alternative investment strategies and assets. The approach the Central Bank has taken to ELTIF authorisation provides a proportionate and appropriate framework and it has seen a steady flow of engagement with the Central Bank. To date, the Central Bank has authorised only closed ended ELTIFs as it awaits the final RTS concerning open-ended ELTIFs. However, Ms Dunne emphasised that the Central Bank is available to discuss how an open-ended ELTIF might be structured (in advance of the official application date of the ELTIF Regulation RTS).

On loan origination, the Central Bank is pleased with the outcome of the AIFMD review and is engaging with industry on the AIFMD II provisions on loan-originating funds. The Central Bank has signalled its intention to align its rules on loan origination with those proposed under the AIFMD revisions. This development will result in significant changes to its existing rules – including removing the "single purpose rule" requirement, and mixed strategy funds will be able to originate loans for the first time. Furthermore, funds which originate loans will be available both to retail and professional investors.

Ms Dunne noted that key to these changes is the governance framework for loan origination that AIFMD II implements. The importance of a robust environment within which lending takes place and which is characterised by strong oversight in relation to lending activities has been a central tenet since the Central Bank implemented its own loan origination rules. A more formal consultation on the Central Bank framework for loan originating funds is due to take place in Q4 of this year.

On UCITS, the Central Bank recognises the importance of ESMA's review of the UCITS Eligible Assets Directive and need to bring the framework up to date given how markets and financial instruments have evolved since its introduction. Ms Dunne noted that the Governor had recently emphasised the need to provide investors with wider range of well-regulated cost-effective products which echo similar calls by ESMA in its report on building more effective and attractive Capital Markets in the EU.

On the remaining AIFMD II changes, Ms Dunne outlined that the Central Bank is in the process of working on implementation plans to reflect the regulatory framework to support the revised Directive. Referring to the AIFMD II enhanced reporting requirements for FMCs and a harmonised set LMTs, Ms Dunne noted that the Central Bank expects that because its rules already provide for a full suite of LMTs as well as there being familiarity with AIFMD Annex IV reporting, that the work to be done is more an adaptation of existing requirements.

Ms Dunne also noted that the Central Bank is currently undertaking thematic work in the area of delegation of investment management functions. The Central Bank is heavily involved in ESMA workstreams in developing level 2 measures and is considering changes to its regulatory rules to reflect the enhancements made and any consequential changes.

On the Regulation on digital operational resilience for the financial sector (*(EU) 2022/2554*) *("**DORA**")*, her remarks covered implementation from a management company perspective which will mean that network security and information and communication technologies ("**ICT**") systems which support business must adhere to harmonised technical standards. This will require the development of an internal governance, control and reporting framework, which will apply across the firm's entire operations and right up to the board who must understand and assess ICT-related risk.

Ms Dunne emphasised that the expectations DORA places on firms are not new and have been in place under a number of guises for quite a period of time. For example, there is a degree of commonality with existing requirements contained in the Central Bank's guidance on Outsourcing, Operational Resilience and IT and Cybersecurity Risks.

In terms of implementation, the Central Bank have established a dedicated team to work with internal and external stakeholders to ensure readiness to supervise all sectors for compliance with DORA obligations by next January.

(b) *Industry briefing on the MiCA Regulation*

On 18 July 2024, the Central Bank Deputy Governor, Consumer & Investor Protection, Derville Rowland, delivered remarks at an industry briefing held to outline the Central Bank's approach to implementing MiCA including its authorisation and supervisory expectations for firms intending to seek authorisation.

Ms Rowland noted MiCA addresses the following areas:

- introduction of prudential and conduct obligations for issuers of e-money tokens, asset-referenced tokens and for CASPs; and
- obligations for offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens.

The Central Bank's priority is to ensure that consumers have clarity around risks when they make financial decisions including when buying crypto-assets. Ms Rowland noted the importance of good culture and conduct risk management in delivering on new obligations under MiCA cannot be

overstated. It is not merely a regulatory requirement; it should be viewed as a fundamental component of maintaining trust, integrity and stability within the sector.

Regarding high risk crypto-services, Ms Rowland outlined that where the Central Bank sees higher inherent conduct and consumer protection risks in products, it will have higher expectations of firms to adhere to high standards. Ms Dunne concluded that the Central Bank is seeking engagement from the sector to enable it to outline its approach to implementing MiCA and for industry to have greater clarity and transparency on the next steps.

(c) *Women in economics: how can we accelerate progress?*

On 5 September 2024, the Central Bank published remarks delivered by Deputy Governor, Vasileios Madouros to the Irish Society for Women in Economic conference on Gender, Economics and Society entitled "*Women in economics: how can we accelerate progress*?".

While his speech focused on the economics profession, the remarks speak to how the Central Bank views the under-representation of women, and lack of identity diversity more broadly, entails important costs including hindering **cognitive diversity in organisations (**i.e. how people think, how they perceive information and how they analyse it). Diversity of thought results in teams and organisations that are better able to innovate, solve problems and make predictions.

The remarks also speak to the Central Bank's strategic efforts to strengthening diversity and inclusion (D&I) in its organisation, including bespoke leadership training, centralised D&I resourcing and using external benchmarks as part of measurement of progress, for example, assessment under the 'Investors in Diversity' framework of the Irish Centre for Diversity.

(d) *The foundations for AML partnership in Ireland*

On 25 September 2024, Deputy Governor, Consumer and Investor Protection, Derville Rowland delivered a speech entitled The foundations for AML partnership in Ireland.

Ms Rowland spoke about how being "future-focused" is a central theme of the Central Bank's strategy. Ms Rowland outlined that the Central Bank is evolving its regulatory frameworks and structures, and it is leveraging technology and innovation to strengthen its abilities to protect consumers and investors. The remarks announced that the Central Bank is now seeking applications to its first Innovation Sandbox Programme, which is open to all sectors of the financial system and centred around the theme of "Combatting Financial Crime".

(e) *Change and challenges – responding to uncertainty, transforming for the future and driving innovation*

On 23 September 2024, Deputy Governor, Derville Rowland delivered a speech entitled 'Change and challenges – responding to uncertainty, transforming for the future and driving innovation'.

Ms Rowland's remarks ranging from MiCA implementation to innovation, the Draghi report and touched on the IAF. As regards the Central Bank's current approach to supervision she noted the move to an integrated supervisory framework (including a new Capital Markets & Funds Directorate) responsible for sectoral supervision (expected in early 2025).

(f) *Implementing DORA (This is a further update to section 3.18(b) of the quarterly report covering the fourth quarter of 2023)*

On 1 July 2024, the Central Bank published a speech on 'Implementing DORA' by Gerry Cross, Director of Financial Regulation, Policy and Risk at the Central Bank and Chair of the ESA's DORA sub-committee providing an overview of the latest ESA's DORA regulatory implementation work, as outlined further in section 3.5(h) and (i) of this report.

2.11 *Innovation sandbox theme (This is a further update to section 3.8(e) of the quarterly report covering the second quarter of 2024)*

During July the Central Bank published the first theme for their Innovation Sandbox Programme ("**Programme**") (arising from CP156) entitled '*Combatting financial crime: Through the use of innovative technology, foster and develop solutions that minimise fraud, enhance KYC/AML/CFT frameworks, and improve day to day transaction security for consumers*'. On 24 September 2024, the Central Bank launched the opening of its first Programme on the theme of combatting financial crime and published a set of FAQ and guidance, with applications to the Programme accepted by 31 October 2024.

3. OTHER LEGAL AND REGULATORY DEVELOPMENTS

3.1 European Commission

(a) *The Future of European Competitiveness*

On 9 September 2024, former ECB president and Italian prime minister Mario Draghi delivered a report to the European Commission entitled "The future of European competitiveness" (the "**Report**") comprising two parts:

- Part A 'A Competitiveness Strategy for European'; and
- Part B - analysis & recommendations.

The Report's conclusions include that EU capital markets remain fragmented, with excessive reliance on banks relative to capital markets, while the EU's banking sector is subject to specific constraints, particularly with respect to securitisation, that place it at a competitive disadvantage to its international counterparts. Some takeaways of note include the following recommendations:

- **Introducing a European Security Exchange Commission**:
  - ESMA should transition from a body that coordinates national regulators into the single common regulator for all EU security markets, with exclusive supervisory powers over large multinational issuers, major regulated markets with trading platforms in various jurisdictions and central counterparties ("**CCPs**"), before subsequently turn to the mutual funds sector, which is likely to be more controversial. The report envisages creating Joint Supervisory Teams between ESMA sharing supervision with national regulators (and focusing on cross-border supervision matters).
  - Shifting EU security market legislation to a principles-based approach, outlining the key strategic policy choices of co-legislators, while delegating technical work to ESMA, and enhancing its powers to develop and change technical rules and streamline their adoption; and increasing ESMA's funding to enable it to efficiently carry out its regulatory and supervisory tasks.
  - Modifying ESMA's governance and decision making structures to enable ESMA to take swift and decisive action in sensitive areas. The Report proposes the addition of six independent and highly-qualified individuals, including the Chair, to ESMA's Management Board.

- **Enabling the European securitisation market**:
  - Reforming existing securitisation regulation to increase the financing capacity of the banking sector. In particular, the Commission should adopt a legislative proposal to adjust prudential requirements for securitised assets.
  - Capital charges must be reduced for certain simple, transparent securitisation ("**STS**") categories for which the capital charge is not reflecting the actual risk.
  - The Commission should review transparency and due diligence rules to facilitate issuance and acquisition of securitised assets. Currently, the transparency requirements for these assets are relatively high compared to other asset classes and reduce the attractiveness of securitised assets for financial parties.
  - The Report also recommends establishing a securitisation platform to deepen the securitisation market.

- **Reducing regulatory fragmentation to deepen the Capital Markets Union:**
  - Harmonise the insolvency framework. Investors cannot be envisaged to invest cross-border if there is no cross-border certainty about what happens if a company goes bankrupt. Therefore, further steps have to be taken towards a common, harmonised insolvency framework.
  - Eliminate any taxation obstacles to cross-border investing in the EU. EU citizens should be able to invest in other member states without complex taxation procedures, effectively resulting in double taxation. Preferably, the taxation related to capital investments should be synchronised as much as possible to reduce fragmentation in terms of incentives.

- **Encourage retail investors through the offer of second pillar pension schemes**:
  - The EU should better channel household's savings to productive investments. The easiest and most efficient way to do so is via long-term saving products (pensions).
  - Member states are encouraged to evaluate different forms of second pillar products where the successful examples of some EU member states (Netherlands, Denmark and Sweden) can be replicated.

- **Simplification of regulatory rules**.
  - Noting excessive regulatory and administrative burden can hinder the competitiveness of EU companies compared to other blocs Draghi highlights the top three regulatory difficulties encountered by companies as follows:
    - complying with the accumulation of EU legislation and its frequent changes over time, translating into regulatory overlap and inconsistencies;
    - the extra burden added by national transposition and enforcement, including member states 'gold-plating' EU legislation, as well as diverging implementing requirements and standards in different Member States; and
    - the proportionally higher regulatory burden faced by SMEs and small mid-caps compared to larger companies.

- **Sustainable Finance**
  - The EU's sustainability reporting and due diligence framework is highlighted as a major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex rules and to clarify the interaction between various pieces of legislation. The report calls for further clarification of the EU Sustainable Finance Frameworks and ESG Frameworks on the financing of defence products. The frameworks should better consider the size of companies affected by regulation, using appropriate mitigation measures in line with the proportionality principle. CSRD is flagged as an example of the lacking proportionality of the EU acquis vis-à-vis mid-caps, as compliance costs represent up to 12.5% of mid-caps' investment volumes.
  - The EU Taxonomy for Sustainable Finance should be extended to SMEs and the report recommends simplifying the approach to address the risk of the lack of comparability in sustainability reporting across and within industries due to discretion or judgement elements in reporting.
  - European Single Access Point ("**ESAP**"): An agreement was reached last year to create a single point of access to public financial and sustainability-related information about EU companies and EU investment products (ESAP). However, the timeline is very slow: the development of a database should occur by 2028, instead of 2030.

Other recommendations of the Report include:

- Creating a pan-European multi-located stock market by reducing regulatory complexity for initial public offerings (IPOs) and for companies going public, harmonising the rules across EU markets and aligning the rules with non-EU markets.
- Creating a single CCP and a single central securities depository (known as CSD) for all security trades.
- Assessing whether further changes to the Solvency II capital requirements are warranted by further reducing the capital charges on equity investments held for the long term.

The findings of the Report will contribute to the Commission's work on a new plan for Europe's sustainable prosperity and competitiveness.

(b) *Delegated Regulation on complaints handling for issuers of asset referenced tokens ("**ARTs**") under MiCA*

On 30 September 2024, the European Commission adopted a Delegated Regulation containing regulatory technical standards (RTS) specifying the requirements, templates and procedures for the handling of complaints relating to ARTs under MiCA.

The Delegated Regulation relates to Article 31(5) of MiCA and sets out effective and transparent procedures for the prompt, fair and consistent handling of complaints by holders of ARTs.
The Annex to the Delegated Regulation contains a template that for filing complaints.

3.2 Department of Finance

(a) *Second feedback statement on participation exemption in Irish corporate tax system for foreign dividends (This is a further update to section 4.5 of the quarterly report covering the second quarter of 2024)*

On 27 August 2024, the Department of Finance published a second feedback statement on the introduction of a participation exemption for foreign dividends in the Finance Bill 2024.

The second feedback statement contains feedback on responses received to the first feedback statement and potential draft approaches to key elements of the legislation.

Key takeaways include:

- **Geographic Scope of the relief**: The feedback statement notes that "*the geographic scope of the participation exemption currently remains at EU/EEA and tax treaty partner source jurisdictions. It is noted that the existing tax-and-credit relief under Schedule 24 (of the Taxes Consolidation Act ("**TCA**") 1997) will remain available to foreign dividends outside scope of the exemption*."

- **Elections, default positions and minimum terms**: "*A revised approach is now proposed, whereby a taxpayer would claim the participation exemption on the company's annual corporation tax return. A company would have the right to choose, each year, whether to claim the exemption or not. If the exemption is claimed, it must be claimed in respect of all qualifying dividends received in the relevant accounting period. If the company chooses not to claim the exemption, the dividends will be subject to tax and will be entitled to double tax relief under Schedule 24 where available, under the current rules*." A dividend by dividend opt in/opt out approach had been proposed in certain submissions made.

The feedback statement also identifies a number of consequential considerations, including minor technical updates to Ireland's controlled foreign companies rules, as well as to rules in relation to unit trusts, treatment of dividends paid out of foreign profits, transfer pricing rules, scrip dividends and dividends on preference shares. The statement also confirms that no updates are proposed to the rules in relation to portfolio dividends, or to Schedule 24 TCA.

On publication of the second feedback statement, the Minister for Finance noted that "(*t)he introduction of a participation exemption will deliver on the commitment to simplify the Irish corporate tax system. This demonstrates Ireland's continued desire to promote a business environment that remains best in class*."

This second consultation closed on 5 September 2024.

The proposed dividend participation exemption would apply in respect of dividends received in accounting periods commencing on or after 1 January 2025.

(b) *Ireland for Finance progress report 2023*

On 26 August 2024, the Department of Finance published the 2023 Ireland for Finance Progress Report highlighting strong growth statistics. The report also includes a focus on digital finance and fintech initiatives and tokenisation and the commitment of the Central Bank and the Department of Finance to explore the opportunities that exist due to this emerging technology.

The progress report follows on from the initiatives prioritised in the Ireland for Finance action plan for 2024 to 2026.

3.3 Artificial intelligence *(This is a further update to section 4.2(a) of the quarterly report covering the second quarter of 2024)*

On 12 July 2024, Regulation (EU) 2024/1689 on harmonised rules on artificial intelligence (the "**AI Act**") was published in the OJ and entered into force on 1 August 2024. The majority of the provisions of the AI Act will commence apply on 2 August 2026 with the following requirements commencing earlier:

- prohibited AI systems will be banned from 2 February 2025; and
- penalties and the rules on general-purpose AI models will apply from 2 August 2025.

3.4 Government Legislative Programme

(a) *Registration of Limited Partnerships and Business Names Bill 2024 (the "**Bill**")*

On 24 July 2024, the Department of Enterprise, Trade and Employment published the heads of the general scheme (the "**Scheme**") of the above-named Bill accompanied by a regulatory impact analysis.

The Bill would repeal and replace the Limited Partnerships Act 1907 as well as the Registration of Business Names Act 1963, so as to strengthen Ireland's regulatory framework by providing for a robust, transparent and fit for purpose regulatory framework for those using a business name or the limited partnership ("**LP**") model.

The Scheme represents a significant overhaul of the regulatory environment for limited partnerships in Ireland, focusing on transparency, compliance and maintaining a connection with the State while seeking to minimise administrative burdens.

The key changes proposed under the Scheme for LPs include:

- **Enhanced transparency**: New provisions will require LPs to provide additional information at registration, including verification of the identity of partners whether natural or legal persons and their economic activities in the State to ensure the integrity of the registers are upheld.
- **Ongoing connection with the State**: LPs will be required to maintain a registered office or principal place of business in Ireland at all times, ensuring a continuous link with the State.
- **Register of beneficial ownership**: A register for beneficial ownership of non-EEA partners will be established to align with EU anti-money laundering directives.
- **Annual reporting obligations**: LPs will be subject to annual reporting requirements to maintain an accurate and reliable register.
- **EEA resident requirement**: At least one general partner must be an EEA resident or have a registered office or principal place of business in an EEA state for the duration of the LP.
- **Enhanced enforcement and compliance**: The registrar will have increased authority to ensure compliance, including powers to remove non-compliant LPs from the register; whilst retaining the nature of the limited partnership framework.

LPs registered under the 1907 Act will be required to comply with the new registration requirements within 12 months of the notice from the registrar (to be issued within thirty months of commencement of the Bill as an Act).

(b) *Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024*

On 24 July 2024, the Department of Enterprise, Trade and Employment published the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 (the "**Bill**") and the accompanying explanatory memorandum. The Bill is aimed at strengthening regulatory, governance and enforcement provisions in the Companies Act 2014 and among other things provides the legislative basis to:

- enable companies to avail of a more modern and flexible way of doing business – holding fully virtual general meetings;
- enable the merger of two or more designated activity companies;
- allow the execution of documents under company seal where the seal and signatures are each on separate pages;
- provide additional grounds for involuntary strike off including:
    - failure to notify a change of registered office;
    - failure to record a company secretary with the Companies Registration Office; and
    - failure to notify the Registrar of Beneficial Ownership of the information in relation to the beneficial owner of a company; and
- enhance the powers of the Corporate Enforcement Authority.

3.5 ESMA & European Supervisory Authorities ("**ESAs**")

(a) *List of recognised third-country CCPs ("**TC CCPs**") under EMIR Regulation (648/2012) ("**EMIR**")*

On 8 August 2024, ESMA announced that it has signed a Memorandum of Understanding ("**MoU**") with the British Columbia Securities Commission and updated its list of recognised TC CCPs under Article 25 of EMIR. The MoU establishes cooperation arrangements, including the exchange of information, regarding TC CCPs which are established in Canada and authorised or recognised by the British Columbia Securities Commission, and which have applied for EU recognition under EMIR.

ESMA recognised the Canadian Depositary for Securities Clearing and Depositary Services Inc. ("**CDSC**") as a Tier 1 CCP under Article 25 of EMIR.

The recognition of CDSC as a TC CCP follows the equivalence decision regarding the regulatory framework for CCPs established in certain provinces of Canada, and the signing of the MoU between ESMA and the British Columbia Securities Commission dated 18 July 2024.

(b) *Second Trends, Risks and Vulnerabilities Report of 2024 (This is a further update to section 3.4(l) of the quarterly report covering the first quarter of 2024)*

On 29 August 2024, ESMA published its second Trends, Risks and Vulnerabilities Report for 2024 and associated statistical annex. Some of the main relevant findings on structural developments and the status of key sectors are set out below.

ESMA's press release entitled *'Markets increasingly sensitive after strong performance in early 2024'* accompanies the report and highlights the key takeaways.

Verena Ross, ESMA's Chair, highlighted that ***"****(m)arkets are getting more nervous about the economic outlook and political events, as the dip in equity valuations in early August and market volatility around recent European and French elections shows… We continue to see risks in the fund area linked to liquidity mis-matches, particularly in the real estate sector, and deteriorating quality of assets linked to interest rate, credit risk and valuation issues."*

The following are the main report findings relevant to funds and fund service providers.

Market monitoring

Securities markets: Asset prices in early 2024 trended upwards with little volatility suggesting future rate cuts were being anticipated. Episodes of market volatility took place linked to elections in the EU in June and July, and a short-lived dip in global equity valuations in early August was associated with weaker-than-expected US macroeconomic indicators. In fixed income markets, corporate bond spreads have continued to fall, especially for high-yield corporates while the credit quality of high-yield non-financials has continued to decline, particularly real estate. This may indicate search-for-yield behaviour with a possible underestimation of risks.

Asset management: EU fund performance was positive across categories and funds exposed to fixed income instruments (bond funds and MMFs) recorded inflows. The increase in interest rates has been offset by a broad-based market perception of declining credit risk, reflected in low credit spreads. However, bond fund portfolio credit quality, as measured by credit rating, has continued to deteriorate, raising the risk of a disorderly repricing of risky assets. Risks continue around liquidity risks and potential losses related to interest rate, credit risk and valuation issues. Open-ended real estate funds remain particularly vulnerable given their structural liquidity mismatch and downward pressure on valuations in housing markets.

Structural developments

Market-based finance: Capital availability for European corporates through capital markets has been broadly stable in 2024 so far. Corporate debt sustainability remains a considerable risk, especially in lower quality segments.

Sustainable finance: Recent ESG-related market developments (e.g. growing political pressure and the EU/US elections) have sparked concerns on the ability to mobilise private capital, with green bond issuance slowing and sustainable funds facing outflows for the first time in 2H23. Looking ahead, firms' ability to announce credible transition plans could steer broader willingness to invest in transitioning firms, supported by transition finance instruments. The number and size of funds tracking EU climate benchmarks – which can be used to construct portfolios with a decarbonisation objective – have been steadily growing over the last three years. Information disclosed under the Taxonomy Regulation (EU) 2020/852 is currently only available for a small set of (large) firms and it will take a few years for coverage to improve.

Financial innovation: Crypto-assets markets continued to surge in the first half of 2024, fuelled by the approval of spot bitcoin and ether exchange traded products in the US. Liquidity also recovered to pre-FTX levels. The market developments in early August led to volatility and some substantial falls in crypto-asset valuations. High concentration also continues both for crypto-assets and crypto exchanges.

(c) *ESA's joint committee ("**JC**") report on risks and vulnerabilities*

On 10 September 2024, the ESAs issued their Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system. The Report underlines ongoing high economic and geopolitical uncertainties. The ESAs warn national supervisors of the financial stability risks stemming from these uncertainties and call for continued vigilance from all financial market participants. For the first time, the Report also includes a cross-sectoral deep dive into **credit risks in the financial sector**, outlining why credit risk is currently a concern and the key credit exposures of financial institutions ("**FIs**").

Against the backdrop of the risks and vulnerabilities communicated in its August report, the JC of the ESAs advises NCAs, FIs and market participants to take the following policy actions:

- FIs and supervisors should remain prepared to face the impacts of continued **high interest rates** on the real economy;
- **credit risk** should continue to be monitored and carefully managed as its potential materialisation remains a concern. This underlines the need for adequate provisioning levels and forward-looking provisioning policies, while maintaining prudent and up-to-date **collateral valuation**;

- FIs need to be **flexible and agile** and have proper plans and processes in place to address unexpected short-term multi-fold challenges (e.g. sudden changes arising from geopolitical risks;
- FIs and supervisors should remain vigilant regarding the **impact of inflation** on product development; and
- FIs and supervisors should remain vigilant to operational and financial stability risks that could arise from **cyber-risks**, as exemplified by the global IT disruption in July from the failed software update of a widely used cybersecurity company.

(d) *Recast ECB Regulation (EU) 2024/1988 on investment fund statistics*

On 23 July 2024, Regulation (EU) 2024/1988 of the ECB concerning statistics on investment funds and repealing Decision *(EU) 2015/32* (ECB/2024/17) (recast) (the "**Regulation**") was published in the OJ.

The Regulation is a recast of ECB Regulation (EU) No 1073/2013 concerning statistics on the assets and liabilities of investment funds. The primary purpose of the investment fund statistics collected is to provide policymakers with a comprehensive and timely picture of developments in the investment fund sector in the euro area.

This recast Regulation introduces new reporting requirements allowing the collection of more granular data on instruments, including stocks, flows and security-by-security information, using the existing information reported to EU authorities, (such as AIFMD Annex IV reporting), to the extent possible. The new requirements detailed in Annexes I and II of the Regulation will provide the ECB with a comprehensive and timely picture of developments in the investment fund sector in the euro area.

In order to ensure continuity in the reporting of statistical information concerning investment funds the application of the Regulation will commence on 1 December 2025 in order to allow sufficient time for NCAs and investment funds to prepare for the relevant reporting requirements.

(e) *ESMA keynote speeches (This is a further update to section 4.3(j) of the quarterly report covering the first quarter of 2024)*

On 23 September 2024, Verena Ross' keynote speech at AFME's 8th Annual European Compliance and Legal Conference, focused on one of the Draghi report's key recommendations of reforming the securitisation market in the EU, as well as on DORA implementation.

On DORA, the ESAs are assessing in advance of DORA implementation the potential set up of a single EU Hub for major ICT-related events. ESMA is also actively working on considerations regarding DORA supervision, particularly in the early stage of 2025, to support competent authorities in the consistent and proportionate application of the new framework.

On 8 September 2024, Verena Ross' keynote speech at the EUROFI Financial Forum 2024, entitled 'Putting investors and companies at the heart of effective and attractive EU capital markets' outlined ESMA's perspective on the proposed EU Savings and Investment Union.

Ms Ross' remarks referred to ESMA's recent position paper setting out 20 recommendations for deepening the EU's capital markets, noting in particular the potential for a voluntary EU-label for "basic" investment products. Such a label could be used by certain financial instruments, such as for example a sub-set of UCITS funds or a plain vanilla corporate bond aligned with simplified advice meeting basic investment needs (which could be based on streamlined suitability assessments) with the additional benefit to firms of reducing compliance costs.

Her remarks concluded on the theme of supervisory convergence: ensuring consistency across the EU's national supervisors. Building on ESMA's work co-ordinating supervisory activity via its common supervisory actions, ESMA is calling for more joint supervisory work (and potential for ESMA to centralise certain supporting tasks), for example, analysing EU-wide data and building common risk indicators would then be used by the NCAs to direct their supervisory efforts, focusing on the highest risk firms or products.

(f) *ESMA newsletter – spotlight on markets – July 2024*

On 8 August 2024, ESMA published its latest edition of the Spotlight on Markets Newsletter which covers the following updates addressed in this and previous reports:

- ESMA published an opinion on global crypto firms using their non-EU execution venues.
- On DORA the ESAs published the second batch of policy products and the final report on the draft technical standards on subcontracting ICT services;
- the EU systemic cyber incident coordination framework;
- ESMA's long-term vision on the functioning of the sustainable finance framework;
- ESMA/NCA analysis of the cross-border provision of investment services in 2023;
- consultations on different aspects of the Central Securities Depositories Regulation Refit; as well as
- a new package of public consultations in the context of the MiFIR review.

The newsletter features a full overview of all publications, together with information on hearings and webinars.

(g) *ESMA newsletter – spotlight on markets – June 2024*

ESMA has published its latest edition of the Spotlight on Markets Newsletter which covers the following updates addressed in this and previous reports:

- ESAs call for enhanced supervision and improved market practice on sustainability-related claims;
- ESMA's final report on greenwashing;
- ESMAs measures to support corporate sustainability reporting;
- ESAs propose improvements to the sustainable finance disclosure regulation;
- New MiCA rules increase transparency for retail investors; and
- Guidelines on suitability of management body members and shareholders for entities under MiCA.

(h) *Report on draft DORA RTS on sub-contracting*

On 25 July 2024, the joint committee of the ESAs published its final report on draft RTS to specify the elements a financial entity needs to determine and assess when sub-contracting ICT services supporting critical or important functions, as mandated by Article 30(5) of DORA.

The draft RTS set out requirements when the use of sub-contracted ICT services supporting critical or important functions (or material parts of such functions) by ICT third-party service providers is permitted by financial entities. The draft RTS also lay down the conditions applying to such sub-contracting, in particular, the risk assessment during the pre-contractual phase and the monitoring and management of contractual arrangements regarding the sub-contracting conditions.

The ESAs have submitted the draft RTS to the Commission for adoption by way of delegated regulation.

(i) *ESAs publish second batch of draft DORA technical standards*

On 18 July 2024, the ESAs published the second batch of policy products under DORA.

This publication consists of four final draft regulatory technical standards (RTS), one set of Implementing Technical Standards (ITS) and 2 sets of guidelines, all of which aim at enhancing the digital operational resilience of the EU's financial sector.

The final draft technical standards are:

- RTS and ITS on the content, format, templates and timelines for reporting major ICT-related incidents and significant cyber threats;
- RTS on the harmonisation of conditions enabling the conduct of the oversight activities;

- RTS specifying the criteria for determining the composition of the joint examination team (JET); and
- RTS on threat-led penetration testing (TLPT).

The set of guidelines are:

- Guidelines on the estimation of aggregated costs/losses caused by major ICT-related incidents; and
- Guidelines on oversight cooperation.

The package of measures focuses on the reporting framework for ICT-related incidents (reporting clarity, templates) and threat-led penetration testing while also introducing some requirements on the design of the oversight framework, which enhance the digital operational resilience of the EU financial sector, thus also ensuring continuous and uninterrupted provision of financial services to customers and safety of their data.

Next steps

The guidelines have already been adopted by the Boards of Supervisors of the three ESAs. The final draft technical standards have been submitted to the Commission, which will now commence their review with the objective to adopt these policy products in the coming months.

The remaining RTS on sub-contracting will be published in due course.

(j) *Final report on second set of RTS and ITS under MiCA*

On 4 July 2024, the ESMA published a final report on its second set of regulatory technical standards (RTS) and implementing technical standards (ITS) under MiCA. The report contains six draft RTS and two draft ITS that aim to provide more transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements, and data standards to facilitate supervision by NCAs.

The draft technical standards include:

- content, methodologies and presentation of sustainability indicators and adverse impacts of crypto-assets on climate;
- business continuity and regularity in the performance of crypto-asset services;
- record keeping obligations for CASPs;
- machine readability of white papers and the register of white papers; and
- disclosure of price-sensitive information to the public to prevent market abuses, such as insider dealing.

The draft standards provide market participants with technical requirements to ensure human and machine readability of crypto-asset white papers, as well as templates and formats for CASP order and transaction records. The rules also detail how CASP trading platforms should publish the data required for pre-and-post-trade transparency. Once in place, this will ensure that NCAs have access to the information needed for effective supervision of the EU crypto-asset market.

Next Steps

Once finalised, the draft technical standards will be submitted to the Commission for adoption. The Commission shall decide whether to adopt them within 3 months.

The Walkers' Asset Management & Investment Funds and Regulatory & Risk teams have recently published an advisory entitled *'Provision of crypto-asset services by UCITS Mancos/AIFMs, investment firms and credit institutions*' which discusses the MiCA notification regime enabling regulated financial service providers to provide certain crypto-asset services from 30 December 2024.

(k) *ESAs consultation on MiCA guidelines*

On 12 July 2024, the ESAs published a consultation paper on Guidelines under MiCA, establishing templates for explanations and legal opinions regarding the classification of crypto-assets along with a standardised test to foster a common approach to classification.

In order to support market participants and supervisors in adopting a convergent approach to the classification of crypto-assets, the Guidelines propose a standardised test, as well as templates for explanations and legal opinions that provide descriptions of the regulatory classification of crypto-assets in the following cases:

- ARTs: The white paper for the issuance of ARTs, which contains comprehensive information about the crypto asset, must be accompanied by a legal opinion that explains the classification of the crypto asset – in particular, the fact it is not an EMT nor a crypto-asset that could be considered excluded from the scope of MiCA.

- Crypto-assets that are not ARTs or EMTs under MiCA: The white paper for the crypto-asset must be accompanied by an explanation of the classification of the crypto asset – in particular, the fact it is not an EMT, ART or crypto-asset excluded from the scope of MiCA.

ESMA invites comments to the consultation by 12 October 2024.

(l) *Q&As on MiCA & MiFID II (updated)*

On 12 July 2024, ESMA published a series of new Q&As on the interpretation of provisions under MiCA & MiFID II as follows:

MiCA:

- Treatment of staking services in MiCA (2067)
- Grandfathering clause and applicable AML laws (2068)
- Interaction between Article 60 notifications and the CASP transitional phase (2069)
- Simplified authorisation procedures (2070)
- Crypto-asset transfers as component of another crypto-asset service or as a separate crypto-asset transfer service (2071)
- Entities not authorised as CASPs by the end of the transition period (2220)
- Entities who have not applied for, or whose application for authorisation as CASPs has been refused by the end of the transition period (2221)

Markets in Financial Instruments Directive II (MiFID II):

- Interpretation of "emission allowances" under C(4) (847)

(m) *Opinion on global crypto firms risks under MiCA*

On 31 July 2024, ESMA published an opinion addressing the risks presented by global crypto firms seeking authorisation under MiCA for part of their activities (crypto brokerage) while keeping a large part of their group activities (intra-group execution venues) outside the EU regulatory scope (the "**Opinion**").

ESMA refers to its October 2023 statement on MiCA in which it noted that multifunction crypto-asset intermediaries ("**MCIs**") (which it refers to in the statement as global crypto firms) might seek to operate under the MiCA framework "using group structures that tend to be complex and opaque", and highlighting the possibility of these entities engaging in regulatory arbitrage. ESMA noted that MCI's business strategies could lead to the risk of conflicts of interest, weaker investor protection and an unlevel playing field with EU trading platforms.

ESMA recognises risks associated with global crypto firms' complex structures remain where execution venues fall outside of the scope of MiCA. Such structures may include the involvement of an EU-authorised broker effectively routing orders to an intra-group execution venue based outside the EU, potentially leading to diminished consumer protection and to an unlevel playing field with EU-authorised execution venues.

Considering these risks ESMA recommends NCAs to be vigilant during the authorisation process and to assess business structures of global firms (in particular, the operation of a trading platform for cryptoassets) to ensure that they do not bypass obligations established in MiCA, to protect consumers and ensure transparent and orderly functioning of crypto markets. ESMA encourages NCAs to consider if the brokerage activities will in reality constitute solicitation of EU clients on behalf of unauthorised entities. The Opinion requires NCAs to make a case-by-case assessment, outlining the specific requirements that should be met regarding best execution, conflicts of interest, the obligation to act honestly, fairly and professionally in the best interests of clients and the obligation relating to the custody and administration of crypto-assets on behalf of clients.

(n) *PRIIPs KID summary table of member states language and ex-ante notifications*

On 23 July 2024, ESMA published a table which provides a summary of the language and ex ante notification requirements for the PRIIPs key information document in different member states.

(o) *Consultation on firms' order execution policies under MiFID II*

On 16 July 2024, ESMA launched a consultation on draft technical standards specifying the criteria for how investment firms establish and assess the effectiveness of their order execution policies. Annex II contains the full text of the draft RTS.

ESMA is seeking stakeholder input on:

- the establishment of an investment firm's order execution policy. This includes the classification of financial instruments in which firms execute client orders and the initial selection of venues for the order execution policy;
- the investment firm's procedures to monitor and regularly assess the effectiveness of its order execution arrangements and order execution policy;
- the investment firm's execution of client orders through own account dealing; and on
- how an investment firm should deal with client instructions.

ESMA will consider all comments received by 16 October 2024. Based on the input received, ESMA expects to publish a final report for subsequent submission of the final draft technical standards to the Commission for endorsement by 29 December 2024.

(p) *MiFIR review - consultation measures and public statement*

On 10 July 2024, ESMA published a package of public consultations containing draft RTS under Regulation (EU) 2024/791 (the "**MiFIR Review**").

The consultation package includes:

(i) amendments to MiFIR rules on the liquidity assessment for equity instruments, on equity transparency and on the volume cap;
(ii) draft ITS on systematic internalisers (known as SIs);
(iii) equity consolidated tape provider specifications;
(iv) flags to be used in the post-trade transparency reports for non-equity instruments; and

(v) new rules specifying organisational requirements of trading venues, adding new provisions on circuit breakers and with targeted amendments to adapt to the DORA framework.

ESMA's consultation is open for feedback until 15 September 2024 and 15 October 2024 respectively and ESMA intends to publish final reports in December 2024 and March 2025.

Subsequently on 22 July 2024, ESMA issued a public statement on the transition to the new regime for the publication of OTC-transactions for post-trade transparency purposes, as introduced by the MiFIR Review. Designated publishing entities ("**DPEs**"), when they are party to a transaction, have responsibility for making the transaction public through an approved publication arrangement ESMA encourages investment firms intending to become DPEs to register with their NCA, indicating the classes of financial instruments for which they wish to take up the function.

ESMA will start publishing the DPE register on 29 September 2024 and the new DPE regime for post-trade transparency becomes fully operational on 3 February 2025.

(q) *Consultations on different aspects of the Central Securities Depositories Regulation ("**CSDR**") Refit*

On 10 July 2024, ESMA launched three consultations on different aspects of the CSDR Refit. The CSDR Refit aims to fine-tune and further clarify the CSDR framework.

The draft rules are set out in three separate consultation papers, covering:

- information to be provided by European CSDs to their NCAs for the review and evaluation,
- the information to be notified to ESMA by third-country CSDs, and
- the scope of settlement discipline covering ESMA's proposals on the underlying cause of settlement fails that are considered as not attributable to the participants in the transaction, and the circumstances in which operations are not considered as trading.

ESMA invites EU CSDs, third-country central securities depositories *("***CSDs**"), CSD participants, as well as any stakeholders that may be impacted by the CSDR settlement discipline to respond to these three consultation papers by 9 September 2024.

Following the consultation, the responses will be assessed to finalise the respective proposals before submission to the Commission in Q1 2025. ESMA has confirmed other consultations concerning aspects of CSDR will follow in the coming months.

(r) *Remarks on shortening the settlement cycle*

On 10 July 2024, ESMA published introductory remarks from a public hearing on shortening the settlement cycle.

The remarks by the ESMA Chair note shortening the cycles to receive securities or funds (T+1) have been growing in focus. ESMA are considering the shortfalls to the reduced settlement cycle and what risks would be associated with this.

ESMA will submit their report on T+1 to the European Parliament and the Council at the latest by mid-January 2025 as required by CSDR Refit.

(s) *2023 data on cross-border investment activity of firms*

On 15 July 2024, ESMA together with NCAs, completed an analysis of the cross-border provision of investment services during 2023. The data sets were collected from investment firms across 30 jurisdictions in the EU/EEA.

The main findings include:

- a total of around 386 firms provided services to retail clients on a cross-border basis in 2023; and

- approximately 8 million clients in the EU/EEA received investment services from firms located in other EU/EEA member states in 2023.

The insights gained from the analysis will allow ESMA and the NCAs to better understand and monitor cross-border investment services provided by firms in the EU/EEA.

3.6 European Systemic Risk Board ("**ESRB**") speech on forthcoming Commission review

On 27 September 2024, the ESRB published a speech given by Olli Rehn, ESRB First Vice-Chair, on new frontiers in macroprudential policy, including the Commission's forthcoming review of the ESRB.

Mr Rehn's remarks noted that initial feedback indicates that the ESRB's current model and mandate do not require a complete overhaul but need some targeted adjustment. The proposed adjustments include the following:

- ESRB could play a stronger role in the holistic analysis of systemic risks within the EU. It has a unique ability to examine cross-sectoral, cross-border and interlinked risks, and the systemic dimension of these risks.
- In its systemic risk assessments, the ESRB should be able to incorporate a range of new emerging risks and vulnerabilities. Several committee members underlined the need to better understand systemic risks related to NBFI, climate change, AI and cyber security.
- The ESRB's access to information from supervisors should be widened so that data can be shared with it by default.

3.7 UK developments

(a) *FCA policy statement containing final rules regarding the OFR (This is a further update to section 4.8 of the quarterly report covering the second quarter of 2024)*

On 17 July 2024, the Financial Conduct Authority ("**FCA**") published its Policy Statement (PS24/7): 'Implementing the Overseas Funds Regime' (the "**Policy**") The Policy sets out the final rules and guidance necessary to implement the OFR. The FCA also responded to feedback from its consultation paper (CP23/26). The new FCA rules and guidance took effect on 31 July 2024.

Following the feedback to CP23/26, the FCA has introduced a number of changes to its original proposals such as:

- **Removal of the proposed 30-day period** between notifying the FCA of changes to OFR recognised funds and when those changes could take effect in the UK.

  Where a change needs to be approved by the home NCA, the fund operator (either the management company of a UCITS, or a self-managed investment company, as applicable) (the "**Fund Operator**") should notify the FCA as soon as reasonably practicable after that approval has been obtained.

  In other cases, the Fund Operator should notify the FCA as soon as reasonably practicable after the decision to make the change has been reached or the event has occurred. In each case the notification to the FCA should, if possible, happen before the change takes effect in the UK. In particular, in the event that funds or sub-funds are to be terminated, the FCA encourages Fund Operators to provide 'adequate notice' once this event is known, so the FCA can address any potential implications for UK investors.

- **Disclosure obligations**: The FCA has indicated that funds must disclose whether investors have access to financial redress schemes such as the UK Financial Ombudsman Service ("**FOS**") and Financial Services Compensation Scheme ("**FSCS**").

OFR webpage guidance update

On 19 July 2024, the FCA has issued an OFR webpage guidance update on the operational impact for operators of funds in the TMPR. In its update, the FCA noted the following:

- **Change of Operator**: Once a Fund Operator has been issued with a landing slot direction, the FCA cannot register any change of operator for UCITS already within the TMPR regime. If a fund operator wishes to change operator, it will need to wait until the UCITS fund is recognised in the UK under the new OFR system.

- **Addition of new sub-fund(s):** Fund operators of umbrella UCITS in the TMPR can currently add a sub-fund if the sub-fund has been authorised since the UK left the EU. Fund operators will continue to be able to do this until 2 weeks before the opening of its umbrella fund landing slot for OFR registration. After this point, Fund Operators will need to wait until the umbrella fund has been recognised in the UK under the OFR to add new sub-funds.

- **Addition of sub-fund(s) authorised prior to 31 December 2020 (not notified under TMPR):** Fund Operators of umbrella UCITS in the TMPR are not able to add a sub-fund of the umbrella fund to the TMPR if the sub-fund was authorised before the UK left the EU. The Fund Operator must apply within its landing slot for recognition under OFR of the umbrella and the sub-funds within the TMPR. Once recognition has been given, recognition of additional non-TMPR sub-funds can then be applied for.

Fund Operators are requested not to make any changes to fund population data during the allotted landing slot and to plan accordingly.

(b) *FCA final suite of OFR guidance*

On 11 September 2024, the FCA published an update on its OFR webpage, which includes the following newly published documents:

- an approach document providing advice for firms when making an application for recognition under the OFR;
- various OFR 'How to' guides on how to prepare and complete OFR applications;
  - Connect user guide: Recognition of a qualifying standalone overseas collective investment scheme (CIS) under the OFR;
  - Connect user guide: Recognition of a qualifying standalone overseas CIS under the OFR (Temporary marketing permissions regime (TMPR) scheme);
  - Connect user guide: Recognition of a qualifying umbrella overseas CIS under the OFR;
  - Connect user guide: Recognition of a qualifying umbrella overseas CIS under the OFR (TMPR scheme);
  - Connect user guide: Recognition of a qualifying sub fund(s) of an umbrella overseas CIS under the OFR;
- a document providing information on draft disclosures; as well as
- application form questions together with accompanying guidance.

The FCA advice for firms document details the information that will be required when submitting an application including about the fund, the fund's profile, fees and charges, characteristics of unit/share classes etc., as well as the FCA's expectations of recognised OFR schemes and of their operators.

The FCA notes that some funds may exhibit certain features (as listed in the FCA approach document) that the FCA considers are unlikely to be compatible with one or more of the FCA standards which may be considered as grounds for refusal of the application. Specifically, the FCA approach document notes these features include, but are not limited to, instances where funds:

- have unsuitable names;
- invest in or have:
  - economic exposure to cannabis-related investments;

  - exposure to crypto-currency. It may be possible for a fund to invest in transferable securities or units of other collective investment schemes which themselves reference crypto-currencies as an underlying asset, where appropriate risk disclosure has been included;
  - exposure to contingent convertible bonds – where a portfolio has significant exposure (exceeding 20% of NAV) to this type of bond, the Fund Operator should ensure that any risks to consumers are mitigated;
- charge permanent redemption or exit charges;
  - In this regard if an overseas fund charges a permanent exit fee to investors (i.e. regardless of the length of time of the investor's holding), the FCA expects a share class to be made available to UK investors where a permanent exit fee is not levied. Liquidity charges payable to the fund itself to cover buying and selling costs at portfolio level are permitted.
- make promotional payments to third parties out of the fund property;
- have inappropriate charging structures subjecting investors to undue cost;
  - The FCA's expectation is that funds charge an appropriate level of fees and charges, so that investors are not subject to undue costs and that a fund's charges are commensurate with the value the fund provides to investors.
- issue bearer shares;
- permit double-charging where there is investment in units / shares of another collective investment undertaking (a '*second scheme*') managed by the same Fund Operator or an associated entity;
- deploy insufficient or inappropriate liquidity management tools to meet its obligation to manage fund liquidity effectively;
- cannot demonstrate Depositary independence;
- where segregation of liability between sub-funds is not ensured in umbrella schemes; or unitholder liability to pay is not limited; or
- where a fund application was previously refused by the FCA or where withdrawal was encouraged or where an individual/firm was prohibited from carrying out regulated activities in the UK.

The FCA will verify whether firms have the requisite permissions to lawfully approve financial promotions in the UK, where such approval is needed. With this, the FCA aims to minimise the risk of UK investors receiving a financial promotion that is unfair, unclear or misleading.

The disclosures document provides information on pro forma disclosures relating to consumer redress schemes and potential lack of access to the FSCS and the FOS. These sample disclosures can form the basis for drafting the relevant updates to UK country supplements. In general, the FCA Handbook requires that the prospectus of OFR recognised schemes (including the relevant UK supplement) must contain the same information as the prospectus of a UK authorised fund. This is qualified to the extent this would be compatible with the basis of home state approval, including the enhanced disclosures relating to the availability of any consumer redress scheme.

As regards the process for making the enhanced disclosures the document notes that where required, approval from the NCA responsible for authorising and supervising the fund must be applied for and obtained in advance of making the OFR application to the FCA. This timing should be factored in to planning for the submission of the OFR application to the FCA.

Supporting documents

The OFR webpage confirm that for all scheme or sub-fund application forms, the following supporting documents should be included:

- latest prospectus and any relevant addendum/supplements;
- Instrument constituting the fund, as amended;
- latest annual report and (if more recent) the half-yearly report;
- key investor information document/consumer composite information document; and
- portfolio statement for the Fund(s).

As an OFR recognition application is likely to be an involved process involving compiling data from various fund service providers. The following steps can be taken by Fund Operators anticipating making an OFR recognition submission early in the window:

- for funds currently in the TMPR, Fund Operators should ensure that any contact information previously provided to the FCA is up-to-date and check that its fund population on the FCA register is accurate;
- compiling all of the information and supporting documents that are outlined in the FCA's guidance;
- identifying any funds that have the characteristics that will typically constitute grounds for refusal;
- verifying that a UK authorised firm will approve the fund's financial promotions (unless an exemption applies);
- ensure an appropriate method of paying the application fee is in place;
- registering on the FCA's Connect system. This will create a principal user for the firm who, once assigned, will be able to delegate access to other people (either within the firm or at an external firm). Anyone who has registered / been delegated will be able to submit applications on behalf of the firm. A third party is not able to enrol on behalf of a firm.

Walkers' Asset Management & Investment Funds and Regulatory & Risk teams have published an advisory entitled *'Preparations for the UK Overseas Fund Regime (OFR)'* which examines the recent regulatory guidance related to the OFR application process in Ireland and in the UK, as well as practical considerations for OFR fund operators to be aware of.

4. SUSTAINABLE FINANCE

(a) *ESMA guidelines on funds' names using ESG or sustainability-related terms update (This is a further update to section 5(a) of the quarterly report covering the second quarter of 2024)*

On 21 August 2024, ESMA published its guidelines on funds' names using ESG or sustainability-related terms (the "**Guidelines**").

No additional changes have been made to the final versions of the Guidelines.

Application Date

Accordingly, the Guidelines will commence application three months following publication of the translated version i.e. on 21 November 2024 (the "**Application Date**"). Any new funds created on or after the Application Date should adhere to the Guidelines at the outset.

The transitional period of six months for funds existing prior to the Application Date to adhere to the Guidelines will end on 21 May 2025.

ESMA's requirements according to the use of ESG or sustainability-related terms in funds' names are set out in summary table format below.

	80% minimum proportion of investments	Invest 'meaningfully' in sustainable investments	Paris-aligned Benchmark (PAB) Exclusions	Climate Transition Benchmark (CTB) Exclusions
Sustainability-related words	✓	✓	✓	
Transition-related terms	✓			✓
"E" terms	✓		✓	
"S" terms	✓			
"G" terms	✓			
Combined terms + transition terms	✓			✓

ESMA expects competent authorities and financial market participants (i.e. fund managers) to make every effort to comply with the Guidelines. Additionally, competent authorities are expected to ensure through their supervision that financial market participants comply with the Guidelines by incorporating

the Guidelines into their national legal and/or supervisory frameworks as appropriate, including where particular Guidelines are directed primarily at financial market participants.

Next steps

Within two months of the date of publication of the Guidelines, i.e. by 21 October 2024, individual NCAs, must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the Guidelines. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of their reasons for not complying with the Guidelines.

As outlined at section 2.4(a) of this report, the Central Bank is introducing a fast-track filing process during the transition period for existing funds filing the required updates necessary to comply with the Guidance in the offering documents of SFDR Article 8 and Article 9 funds.

(b) *Commission frequently asked questions ("**FAQs**") on corporate sustainability reporting rules (This is a further update to section 4(c) of the monthly report covering July 2024)*

On 7 August 2024, the Commission published a draft Commission notice containing a set of FAQs on the interpretation of certain legislative provisions in the implementation of the EU corporate sustainability reporting rules. The publication is part of the Commission's continuous effort to make the EU sustainable finance framework more usable for companies and reduce the administrative burden on them.

The FAQs clarify the interpretation of certain provisions introduced by CSRD into Directive 2013/34/EU (the Accounting Directive), Directive 2006/43/EC (the Audit Directive), Regulation (EU) No 537/2014 (the Audit Regulation), and Directive 2004/109/EC (the Transparency Directive). The FAQs also clarify certain reporting provisions in Regulation (EU) 2019/2088 (the Sustainable Finance Disclosures Regulation) and the interpretation of certain provisions of the first set of European Sustainability Reporting Standards (Commission Delegated Regulation (EU) 2023/2772) ("**ESRS**").

The FAQs take into account input received from companies and cover issues such as the scope of the rules, application dates, and exemptions. For example, they clarify when companies may use estimates rather than having to collect value chain information from suppliers or partners. Additionally, topics covered include, for example, scope and application dates, exemption rules, the ESRS, value chain information and the concept of reasonable effort estimation, Article 8 Taxonomy Regulation disclosures, language requirements, timing of publication and supervision Assurance of sustainability reporting and additional FAQs on requirements for third country undertakings.

The Commission notes that the FAQs provide important clarifications and will further reduce the need for companies to seek external advice for applying the rules. The Commission intends to use the FAQs to facilitate the implementation of the CSRD and the compliance of stakeholders with the regulatory requirements in a way that is cost-effective and retains the usability and comparability of the reported information on sustainability.

(c) *ESAs consolidated Q&A on SFDR (updated) (This is a further update to section 3.11(b) of the quarterly report covering the first quarter of 2024)*

On 25 July 2024, the ESAs have published an updated consolidated Q&A on SFDR and the SFDR Delegated Regulation.

The new Q&As can be found in Sections I (Scope issues), IV (principal adverse impact ("**PAI**") disclosures) and V (Financial product disclosures) and have been added at the end of each section with a date indicating their date of publication.

The new Q&As cover a number of key clarifications including those related to:

- website obligations under Article 10 SFDR for registered AIFMs (where no website exists);

- the interaction of Article 6(1) disclosure with financial market participants' (an "**FMP**") sustainability risk obligations under other EU legislation;

- look-through treatment for indirect sustainable investments, i.e. if sustainable investments are made via other products, e.g. in a fund of fund structure, only the actual share of sustainable investments in that product can be recognised - not the product as a whole;

- no automatic reliance is permitted by an FMP on the sustainable investment classification made by another manager (e.g. in situations where investments are made indirectly or by a delegated manager);

- for Article 9 products, efficient portfolio management techniques are only permitted if used for hedging and liquidity and MMFs are only considered as liquidity if they qualify as cash equivalents under IFRS;

- on the treatment of investment in real assets via SPVs/holding companies, no good governance test applies;

- no benchmark is required for a carbon emissions reduction objective under Art. 9(3) SFDR;

- on website disclosures obligations, the ESAs' supervisory expectation is that the obligation to publish the information referred to in Article 10(1)(c)-(d) should be fulfilled by publishing the templates in Annexes II-V of the SFDR Delegated Regulation; and

- two extensive calculation and disclosure methodologies are provided for the calculation and reporting of taxonomy-aligned investments and the calculation of sustainable investments.

(d) *ESMA opinion on functioning of the sustainable finance framework (This is a further update to section 5(b) of the quarterly report covering the second quarter of 2024)*

On 24 July 2024, ESMA published an Opinion on the sustainable finance regulatory framework (the "**Framework**"), setting out possible long-term improvements. The Opinion forms the final part of its reply to the Commission's request for input related to greenwashing.

ESMA acknowledges that the Framework is already well developed and includes safeguards against greenwashing. At the same time, ESMA considers that, in the longer-term, the Framework could further evolve to facilitate investors' access to sustainable investments and support the effective functioning of the sustainable investment value chain.

ESMA's key recommendations for the Commission's consideration:

- the EU Taxonomy should become the sole, common reference point for the assessment of sustainability and should be embedded in all sustainable finance legislation;
- the EU Taxonomy should be completed for all activities that can substantially contribute to environmental sustainability and a social taxonomy developed;
- a definition of 'transition investments' should be incorporated into the Framework to provide legal clarity and support the creation of transition-related products;
- all financial products should disclose some minimum basic sustainability information, covering environmental and social characteristics;
- a product categorisation system should be introduced catering to sustainability and transition, based on a set of clear eligibility criteria and binding transparency obligations;
- ESG data products should be brought into the regulatory perimeter, the consistency of ESG metrics continue to be improved and reliability of estimates ensured; and
- consumer and industry testing should be carried out before implementing policy solutions to ensure their feasibility and appropriateness for retail investors.

(e) *EU (Corporate Sustainability Reporting) Regulations 2024 (S.I. No. 336/2024) (This is a further update to section 4.11(ee) of the quarterly report covering the fourth quarter of 2023)*

On 5 July 2024, the Irish legislation transposing the CSRD (EU) 2022/2464, the European Union (Corporate Sustainability Reporting) Regulations 2024 (S.I. No. 336 of 2024) (the "**Regulations**") were signed into law by the Minister for Enterprise, Trade and Employment and came into effect on 6 July 2024.

The Regulations require that all large companies and all listed companies (except listed micro-enterprises) report sustainability information in accordance with European Sustainability Reporting Standards in the directors' report. Sustainability reporting must be provided with an auditor's opinion with limited assurance and reported digitally. Subsidiaries and large branches of non-EU companies with a significant presence in the EU will also be required to produce an equivalent sustainability report at the level of the parent. The new rules will be phased in for financial years from 2024-2028.

The Department for Enterprise, Trade and Employment expects to issue further guidance providing further clarity on issues pertaining to the application of the Regulations.

On 1 July 2024, the European Union (Adjustments of Size Criteria for Certain Companies and Groups) Regulations 2024 (S.I. No 301 of 2024) came into force increasing the balance sheet and turnover thresholds for 'micro', 'small' and 'large' companies under the Companies Act with the new thresholds applying to financial years commencing on or after 1 January 2024.

(f) *ESMA guidelines in enforcement of sustainability reporting and statement on ESRS*

On 5 July 2024, ESMA published a Final Report on the Guidelines on Enforcement of Sustainability Information ("**GLESI**") and a Public Statement on the first application of the ESRS. The documents are designed to support the consistent application and supervision of sustainability reporting requirements.

The purpose of the GLESI is to provide guidance to build convergence on supervisory practices on sustainability reporting.

The final GLESI are contained at Annex VI of the report. They apply to the supervision of the first ESRS sustainability statements published in 2025 (covering financial year 2024). The final GLESI:

- confirm their application to the supervision of undertakings with securities admitted to trading on EU regulated markets, including third country issuers using ESRS and using sustainability reporting requirements declared equivalent to ESRS. While the sustainability information framework applies to a larger scope of undertakings, GLESI only apply to the supervision of listed undertakings.
- enforcers may encourage compliance by engaging in regular dialogue with issuers, auditors, independent assurance services providers, and users of sustainability information.
- clarify that in relation to interactive examination, enforcers may contact the issuer's auditor or independent assurance services provider.

Through the Public Statement on the first-time application of the ESRS, ESMA intends to support large issuers in going through the learning curve associated with the implementation of these new reporting requirements.

The GLESI will apply following publication of translations on its website. ESMA will continue to monitor the sustainability reporting practices in 2025 as well as the application of the GLESI. In addition, ESMA will release in Q4 recommendations in relation to the sustainability statements of listed companies in its Public Statement on the 2024 European Common Enforcement Priorities.

(g) *European Financial Reporting Advisory Group ("**EFRAG**") technical Q&A expatiations on the ESRS (This is a further update to section 5(i) of the quarterly report covering the second quarter of 2024)*

On 18 July 2024, EFRAG announced the release of 23 new explanations to its compilation of technical explanations (the "**Explanations**") to assist stakeholders in the implementation of the ESRS via the EFRAG ESRS Q&A Platform. The Explanations now includes a total of 93 explanations released between January and July 2024.

These responses are expected to provide practical and timely support to preparers and others in the implementation of ESRS.

The Explanations are grouped in chapters according to their nature (cross-cutting, environment, social or governance) and their disclosure requirements, following the ESRS' architecture. To increase user friendliness, the Explanations also include hyperlinks to the text of the individual ESRS.

The Explanations also has now in an appendix a log of those questions received that were categorised as 'already asked/answered'.

On 3 July 2024, EFRAG also issued a study entitled "*Implementation of ESRS: Initial Practices from Selected Companies - State of play as of Q2 2024".*

EFRAG will continue releasing Explanations following its due process, including on the engagement from both EFRAG's Sustainability Reporting Board and its Technical Expert Group in public discussions.

(h) *Publication of the Corporate Sustainability Due Diligence Directive (EU) 2024/1760) ("**CSDDD**") in the OJ (This is a further update to section 5(e) of the quarterly report covering the second quarter of 2024)*

On 5 July 2024, the final compromise text of the CSDDD was published in the OJ.

Each member state will need to transpose the CSDDD rules into its own national laws and will have two years to do so.

The publication of the legislation comes after a lengthy legislative process in which the CSDDD was finally approved by the EU Parliament in April 2024 and adopted by the EU Council on 24 May 2024.

(i) *Commission CSDDD FAQs*

The Commission has published an FAQ document on the CSDDD which entered into force on 25 July 2024. The CSDDD sets out a corporate due diligence duty for certain large companies to identify and address adverse human rights impacts, environmental impacts in their own operations, their subsidiaries and in their activity chains, and an obligation for large companies to adopt a transition plan for climate change mitigation. The CSDDD mandates a risk-based approach, allowing prioritisation of high-risk areas, and promotes the sharing of resources and information through industry initiatives to ease the compliance load for in scope companies.

The FAQ covers straightforward introductory topics such as *'Why was there a need for the legislation'*, *'when will the rules start applying*' and *'what companies are in scope'*. It also provides answers to some key questions around the treatment of non-EU companies (e.g., how are the rules enforced for non-EU firms) and also highlights areas where misunderstandings may arise, for instance related to the discussions around "chain of activities", "risk-based due diligence", and "civil liability".

(j) *EU Parliament study focusing on SFDR for retail investors (This is a further update to section 5(c) of the quarterly report covering the second quarter of 2024)*

On 3 July 2024, the EU Parliament published a study entitled "*The current Implementation of the SFDR - With an assessment on how the legislative framework is working for retail investors*".

The aim of the study was to "inform the policy debate on sustainability disclosures under the SFDR and provide a legal assessment on possible changes to be brought to relevant legislation in order to improve the framework". Among its policy recommendations for change are:

- more recognisable product labels or categories;
- better interaction between SFDR and other disclosure rules; and
- expanding the scope and reporting of PAIs.

The study finds that retail investors have "little use for most of the information generated under the SFDR". Its disclosures are complex and based on concepts that are unfamiliar and unintuitive for investors, such as PAIs, sustainability risks, "taxonomy aligned", "sustainable characteristics", or "sustainable objectives". The study considers that investors would not be able to differentiate Article 8 funds from Article 9 funds and any reform "should prioritise clarity and usability of information by investors and other relevant actors". The study recommends that new categories should be established to include "impact" products and "transition" products. A "sustainable" category would be welcomed but would need to be more precise. New categories should be based on prior consumer testing with more emphasis on market analysis, to ensure that the categories encompass a sufficiently large part of the market.

(k) *Nature-related risks*

On 18 July 2024, the *Financial Stability Board ("**FSB**")* published a stocktake report on nature-related risks (the "**Report**").
The Report considers financial authorities' perception of nature-related financial risks and summarises regulatory and supervisory initiatives on identifying, assessing and managing nature-related financial risks. The FSB's key findings include:

- Financial authorities are at different stages of evaluating the relevance of biodiversity loss and other nature-related risks as a financial risk.
- Financial authorities that are analysing the issue categorise nature-related risks into the same two types of risks typically used in climate-related financial risk analysis: physical and transition risks. Other authorities also refer to other external work when defining nature-related risks, such as the Taskforce on Nature-related Financial Disclosures ("**TNFD**").
- Regulatory and supervisory work is at an early stage globally, with approaches differing considerably across jurisdictions and institutions. There is a general recognition of the need for more expertise in the supervisory community, central banks and the private sector to understand and, where necessary, address nature-related risks. A number of capacity building initiatives are underway.

The Report finally highlights challenges and future developments, including the ongoing work of the TNFD in providing guidance on nature-related disclosures, will contribute to further developing authorities and firms' understanding of nature-related financial risks and of regulatory and supervisory approaches in the coming years.

On 6 September 2024, Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, delivered a keynote speech at the ESCB Legal Conference 2024. His remarks focused on nature-related litigation and the mandates of central banks and supervisors of financial entities in respect of nature degradation. The speech underlined the importance of the financial sector addressing nature-related risks, alongside climate-related risks.