



# IRELAND

## FINANCIAL SECTOR ASSESSMENT PROGRAM

### TECHNICAL NOTE—UPDATE ON THE ASSESSMENT OF IMPLEMENTATION OF THE IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

September 2016

This Technical Note on Update on the Assessment of Implementation of the IOSCO Objectives and Principles of Securities Regulation on Ireland was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed in August 2016.

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Price: \$18.00 per printed copy

**International Monetary Fund**  
**Washington, D.C.**



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Prepared By  
**Monetary and Capital Markets  
Department**

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program in Ireland. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

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## Glossary

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
AML	Anti-Money Laundering
ASP	Administrative Sanctions Procedure
BaFIN	German Federal Financial Supervisory Authority
CCP	Central Counterparty
CCPC	Competition and Consumer Protection Commission
Central Bank	Central Bank of Ireland
CEO	Chief Executive Officer
CRD	Capital Requirements Directive
CRF	Capital Requirements Framework for Markets Operators
CRR	Capital Requirements Regulations
CSDR	Central Securities Depositories Regulations
EBA	European Banking Authority
EMIR	European Markets Infrastructure Regulations
ESA	European Supervisory Authorities
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EUREX CCP	EUREX Clearing AG
EuSEF	European Social Entrepreneurship Funds
EuVECA	European Venture Capital Funds
FATF	Financial Action Task Force
FC	Financial Counterparty as defined under EMIR
FOI	Freedom of Information
FOI Act	Freedom of Information Act 2014
FSAP	IMF 2016 Financial Sector Assessment Program (Ireland)
IAASA	Irish Auditing and Accounting Supervisory Authority
ICAVs	Irish Collective Asset-Management Vehicle
IF Code	Irish Funds Voluntary Corporate Governance Code for Fund Service Providers
IFFS	Investment Firms and Funds Services Division
IIA	Investment Intermediaries Act 1995
IM	Investor Money

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IOSCO	International Organization of Securities Commissions
ISE	Irish Stock Exchange
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulations
MPD	Markets Policy Division
MSM	Main Securities Market
MTF	Multilateral Trading Facility
NAV	Net Asset Value
NFC	Non-Financial Counterparty as defined under EMIR
ODCE	Office of the Director of Corporate Enforcement
OTC	Over-the-counter
OTF	Organized Trading Facility
PAB	Prescribed Accountancy Body
PCF	Pre-Approval Controlled Function
PRISM	Probability Risk and Impact System (the Central Bank's Risk Based Framework)
ROSC	Reports on the Observance of Standards and Codes
SMSD	Securities and Markets Supervision Division
SPV	Special Purpose Vehicle
UCITS	Undertakings for Collective Investment in Transferable Securities

## INTRODUCTION<sup>1</sup>

1. **In 2013 the IMF conducted a detailed assessment on Ireland’s implementation of the International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation.** The assessment was prepared on the basis of materials provided by the Irish authorities and an expert visit during September 2013. The Detailed Assessment Report (DAR), and the Report on Observance of Standards and Codes were both published in May 2014.<sup>2</sup>
2. **This note is prepared in connection with the 2016 Financial Sector Assessment Program (FSAP) for Ireland with a view to providing an update on developments in the financial sector since the 2013 DAR.** The basis for the note includes a very detailed description of regulatory and supervisory changes prepared by the Central Bank, discussions with relevant staff of the Central Bank and representatives of the sector, and a limited review of related regulations and documents.
3. **This note provides a factual update of the assessment, and does not re-rate the degree of implementation of any principle.** Hence, specific recommendations are limited, but a judgment on the relative importance of different developments is implicit in the respective detail of coverage. The accompanying FSAP documents, and in particular the Financial System Stability Assessment, contains several important findings and recommendations that apply across all areas of financial regulation and supervision.

## SUMMARY

4. **The 2013 assessment found that the regulatory and supervisory system was generally strong** (the main findings and recommendations of that assessment are summarized in Box 1). The legal and regulatory framework was judged to be robust. It was noted that disclosure and anti-market abuse requirements for certain classes of issuers were relatively weak (specifically, those whose securities are not admitted to trading on a regulated market) and that provisions to appoint an administrator to an investments firm in difficulties are lacking. Supervision was seen as effective in most areas. Nonetheless, it recommended that on-site inspections (and, as necessary, enforcement action) be intensified for all “low impact” market intermediaries.

<sup>1</sup> This Technical Note was prepared by Daniel Hardy, Monetary and Capital Markets Department, IMF, in the context of the 2016 Ireland Financial Sector Assessment Program.

<sup>2</sup> <http://www.imf.org/external/pubs/cat/longres.aspx?sk=41581.0> and <http://www.imf.org/external/pubs/cat/longres.aspx?sk=41582.0>.

### Box 1. Summary of Key Findings and Recommendations of the 2013 Assessment

The assessment found that Ireland exhibited a high level of implementation of the IOSCO principles. The legal framework was deemed robust and provided the Central Bank with broad supervisory, investigative and enforcement powers. There were arrangements for on-site and off-site monitoring of regulated entities. Thematic reviews in selected areas complemented such monitoring. The Central Bank and the Irish Stock Exchange had developed sound systems for market surveillance. The Central Bank's key objectives included monitoring and mitigating systemic risk. It routinely reviewed the perimeter of regulation. Its powers to cooperate with domestic and foreign counterparts were extensive. Accounting and auditing standards were high.

According to that assessment, some areas of supervision and enforcement required strengthening. In particular, the Central Bank was recommended to make more use of on-site inspections for "low impact" market intermediaries, and pursue the use of all of its available enforcement authority, including criminal prosecutions.

The assessment mentioned concerns about supervisory independence raised by certain aspects of the legal provisions regarding the governance structure of the Central Bank, although there were no indications of any interference with day-to-day operations. The presence of a member of the Department of Finance on the Commission of the Central Bank, and the authority of the Minister to remove a Commissioner for reasons other than misconduct or incompetence were seen as potential threats to the Central Bank's independence.

The assessment suggested that the regime that applied to entities that have issued their securities to the public, but which are not admitted to trading on a regulated market, needed to be strengthened. General disclosure requirements for issuers with securities admitted to trading on a regulated market (RM) were found to be detailed, and the full market abuse rules applied to these securities. However, there were few equivalent provisions for issuers who offer securities to the public but elect not to have their securities admitted to trading on a regulated market. Further, both the Irish company legislation and EU prescribed deadlines for publishing annual and interim reports should be reduced for all issuers, including collective investment schemes.

The assessment pointed out that the Central Bank lacked the power to appoint administrators to investments firms in the event of financial difficulties within the firm. The Central Bank did not have authority to appoint an administrator or monitor to step in and run a firm that is in crisis, nor did it have authority to take possession/control of assets held by a firm that is in financial difficulty. The absence of these powers effectively meant that the only alternative course of action available is to liquidate a company, thereby crystallizing potentially significant losses for investors and delaying the investors' access to their assets.

The Central Bank relies on foreign supervisors of the systems under which trades in Irish securities are settled on systems physically located outside Ireland (as is common in Europe), without conducting any independent due diligence. The Central Bank has up-to-date memorandums of understanding (MOUs) with only some of the relevant supervisors, although there are information-sharing arrangements and regular communication. There are large exposure limits in place, coupled with reporting requirements.

The assessment noted impediments to the Central Bank's ability to attract and retain high-caliber staff. The Central Bank needed to be able to structure its compensation programs to accommodate the difficulty in recruiting and retaining appropriate skill sets for particular positions.

**5. Since 2013, the regulation of securities and associated institutions and markets has witnessed considerable innovation, and more changes are anticipated.** Among “European” legislative changes, notable has been the coming into force of CRD IV, which, inter alia, strengthens capital requirements, governance, and remuneration rules for investment firms; the amendment of the Transparency Directive, which applies for example to the publication of information on sanctioning; and the forthcoming application of the Market in Financial Instruments Directive II (MiFID II) and the associated regulation, which widens the scope of application of MiFID and enhances rules on reporting, conduct of business, and investor protection. Among domestic legislative changes, the Irish Collective Asset Management Vehicles regulation offers an alternative, more “tailored” legal framework for Irish authorized funds. The Client Assets and Investor Monies regulations should facilitate enforcement and reinforce processes and controls to safeguard client assets and investor monies, which are especially needed in case of insolvency, notably when a fund service provider is to be wound down.

**6. As in other supervisory areas, the Central Bank has increased staff resources dedicated to the supervision of securities, and taken a more pro-active approach.** Several specialized teams have been established, for example, to develop supervisory techniques or to address information technology-related risks. More thematic reviews, covering a wide range of issues, are undertaken, and especially lower-impact regulated entities are subject to more supervision. Enforcement powers have been used more widely.

**7. The Central Bank has been innovative in developing on-going systemic analysis.** It collects and analyzes relevant information on a wide range of non-bank, non-insurance financial intermediaries. The Central Bank now has a program of monitoring the regulatory perimeter, particularly regarding shadow banking and the use of new financial technologies. In these efforts the Central Bank has engaged stakeholders and very actively cooperated with bilateral and multilateral partners. The work on financial stabilities issues in the funds management industry that was undertaken as part of the FSAP would not have been possible without Central Bank initiatives in this area.

**8. Certain issues raised in the 2013 assessment have not been addressed, in large part because any action would require amendments to primary legislation or European structures or other changes (Table 1).** Thus, still pertinent are the concerns expressed, for example, about the role of the Department of Finance impinging on operational independence; and on powers to appoint an administrator to step in to a failing financial intermediary, other than in cases covered by the EU Bank Recovery and Resolution; (BRRD). The supervision of securities settlement systems is based on a high degree of reliance on European counterparts. The various changes related to the publication of financial statements and disclosure to shareholders do not all favor the more frequent or detailed provision of information.



**Table 1. Ireland: Recommendations of the 2013 Assessment and Subsequent Actions**

Principle 2 - The Regulator should be operationally independent and accountable in the exercise of its functions and powers.	2013 Assessment: Partly Implemented
The law should be amended to state that a Commission member may only be removed for specified, objective causes (such as bankruptcy, persistent failure to attend meetings, acting in conflict of interest, etc.).	
Action would require change in primary legislation.	
The Government should amend the Central Bank Act 1942 to remove the inclusion of a Ministry official on the Central Bank Board.	
Action would require change in primary legislation.	
Consideration should be given to including provisions permitting the Central Bank to indemnify staff, officers and Commissioners for their legal costs in the event they are sued in relation to Central Bank duties and make those moneys available to pay costs during the course of the suit.	
Since 2013 the Central Bank also has a 'witness support' policy where it does pay the reasonably incurred legal costs of staff who are involved in legal actions (as a witness or otherwise) arising from their role in the Central Bank.	
Principle 3 - The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	2013 Assessment: Partly Implemented
The government should give the Central Bank additional resources and the flexibility to depart from civil service compensation rules.	
Since 2013 headcount in the Central Bank has increased, and is projected to increase further.	
Principle 4 - The Regulator should adopt clear and consistent regulatory processes.	2013 Assessment: Broadly Implemented
The process of official consolidation of the laws for public use needs to be accelerated. In the meantime, a competent authority in the State or some part of the government should prepare and post 'unofficial' consolidated versions of the key financial services acts and regulations.	
There is a process underway with the Department of Finance in relation to consolidating the Central Bank Acts with the aim of having one piece of legislation. This is likely to be implemented in 2016. The Companies Act 2014 consolidated the Companies Act 1963 to 2013.	
Principle 5 - The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.	2013 Assessment: Fully Implemented
Publish the Employee Code of Ethics on the website so that the public are informed of the high standards of ethical behavior that Central Bank staff is expected to meet.	
The Employee Code of Ethics and Behaviour was published on the Central Bank website on 11 February, 2016.	
Principle 9 - Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.	2013 Assessment: Fully Implemented
Consideration should be given to exploring adjustments that might be made to the confidentiality requirements to facilitate more open discussions and greater sharing of information among the relevant authorities.	
Action would require change in primary legislation.	

Principle 12 - The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	2013 Assessment: Partly Implemented
A more proactive approach to supervision of firms designated by PRISM as Low Impact should be implemented.	
The Markets Supervision Directorate has increased the intensity of supervision of Low Impact regulated entities since 2013. Enforcement data demonstrate a positive trend in the period 2013–2015 for Low Impact firms.	
More prosecutions should be pursued against individuals.	
The Central Bank has taken a number of actions against individuals in 2015, who held positions of responsibility in financial service providers.	
Consideration should be given to amending the law to raise the maximum fines that the District Court can impose on defendants in summary criminal matters.	
Action would require change in primary legislation.	
Principle 16 – There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors’ decisions.	2013 Assessment: Partly Implemented
All companies that have issued shares to the public should be subject to continuing disclosure requirements, regardless of their status as a listed company or the nature of the system on which their securities are traded or quoted.	
No action.	
Larger companies should be expected to issue their audited financial statements in a maximum of ninety days; smaller issuers may be given somewhat longer. The reporting period for interim statements of ESM companies should be shortened from three to two months at the longest.	
No action. The amendments to the Transparency Directive extended the period for publishing the unaudited half-yearly financial report from 2 months to 3 months.	
A change in auditor should be considered to be a material change that gives rise to an obligation for all public companies to immediately inform the relevant authorities, both IAASA and the Central Bank.	
Under the Companies Act 2014, IAASA must be informed if the auditor has changed.	
The continuing disclosure documents issued by public companies should be subject to at least a periodic review by a competent authority.	
No action.	
Principle 17 - Holders of securities in a company should be treated in a fair and equitable manner.	2013 Assessment: Broadly Implemented
Detailed guidance on the information that must be included in any materials sent to shareholders, in connection with a shareholder meeting, should be issued by a competent authority and those requirements should apply to all public issuers.	
No action.	
Consideration should be given to rationalizing and simplifying the requirements that apply to substantial shareholders, officers, directors and other parties. This regime should apply equally to all public issuers.	
No action.	
Principle 18 – Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.	2013 Assessment: Fully Implemented

As for the Central Bank, IAASA should be given additional resources and greater freedom to contract with staff on appropriate terms in order to recruit and retain staff with the necessary expertise.	
No action.	
Principle 19 – Auditors should be subject to adequate levels of oversight.	2013 Assessment: Broadly Implemented
As per 18 above - As for the Central Bank, IAASA should be given additional resources and greater freedom to contract with staff on appropriate terms in order to recruit and retain staff with the necessary expertise.	
No action.	
Principle 26 - Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.	2013 Assessment: Broadly Implemented
The periods within which CIS are required by EU directives to publish annual and semi-annual financial statements should be reduced to enhance transparency for investors and the ability to take prompt investigative or remedial action. (See also the recommendation in Principle 16.)	
No action.	
Principle 27 – Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.	2013 Assessment: Broadly Implemented
The Central Bank should issue clear guidance that the valuation of CIS assets are to be performed in accordance with IFRS or UK and Irish GAAP, or some other high quality accepted accounting standard applied on a consistent basis.	
The AIFMD Level 2 includes detailed requirements regarding the valuation of the assets of AIFs. In addition, the Central Bank has issued rules and guidance in relation to the valuation of assets leading to the production of NAVs, conforming to all the relevant EU legislation.	
All regulated investment funds must prepare a set of audited financial statements on an annual basis in accordance with the provisions of the Companies Acts 1963, and following international financial reporting standards or an approved alternative body of accounting standards.	
The Central Bank should publish rules relating to pricing errors.	
The Central Bank concluded a thematic review on the treatment of NAV pricing errors in 2015. The required amendments to regulations and/or guidance are now under consideration.	
Principle 29 - Regulation should provide for minimum entry standards for market intermediaries.	2013 Assessment: Fully Implemented
The Central Bank should supplement the information made available to the public on the register of firms posted on its website to add: 1) the permitted activities for each investment product intermediary under the IIA; and 2) the identity of senior management and names of other authorized individuals who act in the name of a MiFID investment firm or an IIA firm.	
The register of investment product intermediaries lists entities that are Investment Business Firms (investment intermediaries and Certified Persons) and Solicitors. The permitted activities for the investment intermediaries are contained on other registers, namely "Registers of Investment Business Firms authorised or deemed authorised under the IIA."	
Principle 31 - Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their	2013 Assessment: Broadly Implemented

assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.	
The Central Bank should introduce a general requirement that all firms conduct an annual review of risk management and controls. This review should be required to be performed to objective standards and by a function or entity that is independent of the business of the firm.	
Where an entity is subject to the new IM Regulations or CA Regulations, an IM Examination or Client Asset Examination, as appropriate, must be carried out by the statutory auditor or another external auditor and provided to the Central Bank on an annual basis. The Risk Management principle determining around how investor assets are protected contains two main elements: an obligation to appoint a PCF with responsibility for IM / Client Assets; and an obligation to develop and maintain an IM Management Plan / Client Asset Management Plan.	
Principle 32 - There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	2013 Assessment: Broadly Implemented
The Central Bank should be given the authority to appoint an administrator or monitor to step in and run a firm that is in crisis.	
The S.I. No. 407 of 2015 - Investor Compensation Act 1998 (Return of Investor Funds or Other Client Property) Regulations 2015 introduced rules, to facilitate the speedier distribution of client assets in circumstances where a shortfall in client assets arises following the failure of an investment firm. The European Union (Bank Recovery and Resolution) Regulation 2015 ("BRRD") introduces recovery and resolution powers for 13 of the 96 MiFID authorized investment firms supervised by the Central Bank.	
Principle 33 - The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.	2013 Assessment: Fully Implemented
As part of the review conducted by the Central Bank before a new trading venue is authorized it would be prudent to conduct an on-site inspection either immediately before the venue is given authorization or very shortly thereafter.	
A new application process was implemented with effect from 8 January, 2014: all applicants are now graded as Level 1 (less complex) or Level 2 (complex). All applications from proposed MTFs or Regulated Markets will be classified as Level 2 and therefore involve a number of site visits. Once the authorization process is completed, the relevant supervision team will schedule a series of supervisory engagements/visits/inspections on an on-going basis. The newly authorized entity will be subject to a more intense scrutiny of its activity (including regulatory reporting) in the first few months of operation.	
Principle 36 - Regulation should be designed to detect and deter manipulation and other unfair trading practices.	IMF Assessment: Partly Implemented
The Companies Law should be amended or other legislation introduced to prohibit the full scope of activities that are abusive to the market regardless of where that trading takes place or whether the securities are admitted to trading on a Regulated Market.	
The Market Abuse Regulation ("MAR"), due to come into effect July 2016, will extend the remit of market abuse legislation beyond Regulated Markets to MTFs, OTFs and related OTC derivatives. This will include, as an offence, practices such as market manipulation occurring on a non-regulated market which has not been captured under current legislation. Insider dealing on MTFs, currently an offence under company law, will be covered by MAR.	
Principle 37 - Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	2013 Assessment: Partly Implemented
The Central Bank should carry out reasonable due diligence on the regimes where the principal clearing and settlement of trades by Irish intermediaries or in Irish securities take place, both on the regulatory oversight	

conducted and the effects of bankruptcy/ insolvency regimes on positions (client or intermediary) held in that jurisdiction. Obtaining opinions from legal counsel on the treatment of assets and positions on insolvency, particularly in Belgium, the UK and Germany, would also be prudent.

No action.

The MOU with the UK authorities regarding oversight of CREST should be updated and one should be put in place with BaFin regarding the oversight of Eurex Clearing to ensure an effective gateway for clearing related information.

The MOU with the Bank of England is reviewed annually. A detailed review is expected to be undertaken when the 'regulatory technical standards' relating to the EU Commission's CSD Regulation (Regulation 909/2014) have been finalized.

## OVERVIEW OF THE SECURITIES MARKETS SECTOR

**9. The Central Bank is responsible for the regulation and supervision of, inter alia, Investment Firms, Non-Retail Investment Business Firms, Fund Service Providers, Investment Intermediaries and Collective Investment Schemes authorized in Ireland.** As at end-December 2015 the following firms were authorized by the Central Bank:<sup>3</sup>

<b>Table 2. Ireland: Authorized Securities Market Firms</b> (December 2015)	
<b>Firm Type</b>	<b>No. of Firms</b>
MiFID Authorized Investment Firms (including branches of overseas firms)	132
Non-Retail Investment Business Firms	12
Fund Service Providers	227
Investment Intermediaries	1,705
Collective Investment Schemes (including sub funds)	6,201

**10. The Central Bank is responsible for the authorization and on-going supervision of market operators of regulated markets.** In Ireland, the Irish Stock Exchange (ISE) is the only market operator of a regulated market, namely the Main Securities Market (MSM), which is the principal market for Irish and overseas companies.

**11. There are currently four Multilateral Trading Facilities (MTFs) operating in Ireland:** the Enterprise Securities Market, which is an equity market designed for small to medium-sized growth companies; the Global Exchange Market, which is a specialist debt market aimed at knowledgeable investors; the Atlantic Securities Market, which provides companies with a dual US/EU gateway for

<sup>3</sup> Includes branches of MiFID firms that are supervised from a conduct perspective but not authorized by the Central Bank.

raising capital; and POSIT, which is a ‘point-in-time electronic block crossing’ network that provides anonymous continuous and scheduled crossing of non-displayed equity orders.

**12. In accordance with the UCITS Regulations, the Central Bank is the competent authority in Ireland for the authorization and supervision of Undertakings for Collective Investment in Transferable Securities (UCITS).** UCITS are open-ended investment funds and may be established as unit trusts, common contractual funds, Irish Collective Asset-Management Vehicles (ICAVs), variable or fixed capital companies.

**13. Non-UCITS funds, collectively referred to as Alternative Investment Funds (AIFs), are subject to certain regulatory requirements.** Alternative investment funds (AIF) are collective investment undertakings, which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which are not UCITS.<sup>4</sup> An AIF must appoint an Alternative Investment Fund Manager (AIFM) authorized and supervised in accordance with the AIFM Directive.

**14. The Central Bank is the competent authority in Ireland for the authorization of Investment Intermediaries, which are investment business firms as defined under the Investment Intermediaries Act 1995 (the IIA).**

## MAIN CHANGES IN SECURITIES REGULATION AND SUPERVISION SINCE 2013

### A. Legislative and Regulatory Changes

Table 3. European Directives, and Regulations <sup>5</sup>	
BRRD	European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015).  The BRRD introduces recovery and resolution powers for 13 of the 96 MiFID authorized investment firms supervised by the Central Bank. A MiFID investment firm falls into the scope of the BRRD if it has an initial capital requirement of €730k, (i.e. the firm’s authorization includes the investment service of dealing on own account and/or underwriting on a firm commitment basis).
Criminal Justice Act 2013 (CJA 2013)	The Criminal Justice Act, 2013, which amends the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, was signed into law on the 12 June, 2013.  The 2013 Amendments incorporated into the CJA 2010 provisions that ensure that Irish legislation is broadly in line with the FATF Recommendations.

<sup>4</sup> It is possible for AIFMs to use the designation European Venture Capital Funds (EuVECA) or European Social Entrepreneurship Funds (EuSEF), to which certain special regulations apply. Such Funds are currently of minor importance in Ireland.

<sup>5</sup> European directives must be transposed into national legislation and regulations. European regulations have the force of law without transposition.

CRD IV; CRR	<p>Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ('CRD') and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms ('CRR'); amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and collectively known as CRD IV.</p> <p>The key relevant changes include:</p> <ul style="list-style-type: none"> <li>• an increase in the quality capital and quantity held by investment firms by setting higher minimum capital ratios;</li> <li>• the introduction of liquidity and leverage requirements;</li> <li>• revised rules for counterparty risk; and</li> <li>• revised rules on corporate governance, including remuneration.</li> </ul>
CSDR	<p>Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July, 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012. It entered into force on 17 September, 2014. The Regulation requires:</p> <ul style="list-style-type: none"> <li>• · Settlement in two days of the trade (T+2);</li> <li>• · Penalties for failed trades;</li> <li>• · Dematerialisation of securities;</li> <li>• · Prudential supervision of CSDs;</li> <li>• · Passporting of CSD;</li> <li>• · Freedom of choice; and</li> <li>• · Access by CSDs to other market infrastructures.</li> </ul>
<p>EMIR;</p> <p>EMIR Level 2 for central counterparties colleges;</p> <p>EMIR Regulations</p>	<p>Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July, 2012, on OTC Derivatives, Central Counterparties and Trade Repositories.</p> <p>Commission Delegated Regulation (EU) No 876/2013 of 28 May, 2013, supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties.</p> <p>European Union (European Markets Infrastructure) Regulations 2014 (S.I. No. 443 of 2014).</p> <p>The main requirements that have recently come into force or are anticipated imminently are:</p> <ul style="list-style-type: none"> <li>• Requiring that details of all derivative contracts be reported to trade repositories and be accessible to relevant supervisory authorities [effective Q1 2014];</li> <li>• Imposing an obligation for certain classes of over-the-counter (OTC) derivative contracts to be cleared through authorized central counterparties (CCP), to commence in Q2 2016;</li> <li>• Establishing common organizational, conduct of business and prudential requirements for CCPs (and requiring the authorization of existing and prospective CCPs), effective in Q4 2013; and</li> </ul>

	<ul style="list-style-type: none"> <li>• Providing for risk mitigation techniques for non-cleared OTC derivative contracts, effective Q1 2013.</li> </ul> <p>The Central Bank was appointed as national competent authority for EMIR (including with regard to NFCs and Pension Scheme Arrangements not previously regulated by the Central Bank) by way of the EMIR Regulations signed by the Minister for Finance in October 2014.</p>
EuSEF; EuVECA	<p>Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April, 2013, on European social entrepreneurship funds. Irish implementing regulation is European Union (European Social Entrepreneurship Funds) Regulations 2015 (S.I. No. 166 of 2015).</p> <p>Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April, 2013, on European venture capital funds. Irish implementing regulation is European Union (European Venture Capital Funds) Regulations 2015, (S.I. No. 167 of 2015).</p> <p>The EuVECA and EuSEF Regulations create regimes whereby managers of venture capital and social entrepreneurship funds can brand their AIFs with the respective designation, and avail of a European passport where that manager registers with its competent authority. The EuVECA and EuSEF Regulations contain rules in relation to eligible managers, qualifying funds and qualifying investments. The Central Bank was designated competent authority in Ireland for EuVECA and EuSEF in May 2015.</p>
MAD II; MAR	<p>Directive 2014/57/EU of the European Parliament and of the Council of 16 April, 2014, on criminal sanctions for market abuse. This piece of legislation (MAD II) is also widely known as CSMAD.</p> <p>Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April, 2014, on market abuse.</p> <p>MAD II defines the offences: insider dealing, recommending or inducing another person to engage in insider dealing, unlawful disclosure and market manipulation, which should be regarded by Member States as criminal offences at least when they are serious and committed intentionally. The Directive creates a more harmonized sanctions regime across member states relating to the levels of fines that can be imposed for market abuse offences. The Directive also requires Member States to criminalize inciting, aiding and abetting insider dealing, unlawful disclosure of inside information and market manipulation, as well as attempts of insider dealing and market manipulation.</p> <p>MAR provides an indicative list of High Frequency Trading strategies that shall be considered as market manipulation. The scope of the legislation is also extended to market abuse occurring across both commodity and related derivative markets. The manipulation of benchmarks, including LIBOR and EURIBOR will be prohibited.</p>
MiFID II; MiFIR	<p>Directive 2014/65/EU of the European Parliament and of the Council of 15 May, 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. Will apply to in-scope firms from 3 January, 2017.</p> <p>Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May, 2014, on markets in financial instruments and amending Regulation (EU) No 648/2012. Will apply to in-scope firms from 3 January, 2017.</p>



	<p>MiFID II/ MiFIR, which is meant to apply from 3 January, 2017, broadens the scope of MiFID by bringing new activities into scope, removing or narrowing exemptions (e.g., dealing on own account), covering new financial instruments (e.g., commodity derivatives) and a wider range of products (e.g., structured deposits). Consequently, some firms that are currently outside the scope of MiFID may need to apply for authorization under MiFID II. Other changes include: the introduction of a new category of trading venue, the Organized Trading Facility (OTF), new transparency and reporting requirements, enhanced conduct of business and investor protection rules, new organizational requirements, rules governing third country firms operating in the EU via a branch, new product intervention powers for competent authorities (and ESMA) as well as new supervisory and enforcement powers for competent authorities.</p> <p>On 10 February, 2016, the European Commission proposed a one-year extension to the entry into application of MiFID II. The necessary EU legal instruments to delay MiFID II are expected to be finalized shortly, which implies that MiFID II will not come into effect until January 2018.</p>
Transparency Directive II	<p>Directive 2013/50/EU of the European Parliament and of the Council of 22 October, 2013, amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading; and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.</p> <p>The main amendments include:</p> <ul style="list-style-type: none"> <li>• closing a gap in the notification requirements by requiring disclosure of major holdings of all financial instruments that could be used to acquire economic interest in listed companies and which have a similar effect as holding equity;</li> <li>• abolishing the requirement to publish quarterly financial information (to reduce the administrative burden on issuers, even at the cost of some reduction in transparency for investors);</li> <li>• requiring Member States to adopt common minimum standards on: <ul style="list-style-type: none"> <li>• types and addressees of sanctions;</li> <li>• the level of fines;</li> <li>• the criteria to be taken into account by competent authorities when applying sanctions; and</li> <li>• the publication of sanctions.</li> </ul> </li> </ul> <p>In this context, one amendment to the Prospectus Directive has been transposed into national legislation (SI 567 of 2015 relating to changing the definition of Home Member State).</p>
UCITS V Directive ; UCITS Regulation 2016	<p>Directive 2014/91/EU of the European Parliament and of the Council of 23 July, 2014, amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies, and sanctions.</p> <p>The UCITS V Directive amends the UCITS Directive and came into force in September 2014. With effect from 21 March, 2016, the UCITS V Directive was transposed into domestic legislation by way</p>

	<p>of the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016 – S.I. 143 (see below).</p> <p>The European Commission adopted in December 2015 (applicable from June 2016) level 2 Delegated Regulation on obligations of depositaries under the UCITS V Directive. The Regulation contains detailed provisions about the obligations and rights of depositaries taking into account that the core function of such entities is the protection of the UCITS’ investors.</p>
<b>National regulations and guidance</b>	
CA Regulation	<p>Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015 for Investment Firms (S.I. No 104 of 2015). The CA Regulations came into effect on 1 October, 2015, and replaced the existing Client Asset Requirements.</p> <p>While aspects of the CA Regulations translate the client asset provisions contained in MiFID, they also impose key requirements to further enhance the processes and controls an investment firm should have in place to protect and safeguard client assets. For example, the CA Regulations require that “Facilities Letters” are obtained in relation to client asset accounts opened with third parties and require strict segregation of duties in relation to the completion of client asset reconciliations. (‘Facilities Letters’ may relate to client funds or to client financial instruments, and set out an agreement between the investment firm and the third party holding the client asset account(s). It should be regarded as the master letter implemented at the beginning of a new relationship with a banking provider, custodian or other third party.)</p> <p>The CA Regulations introduces two new requirements with the objective of strengthening the governance and risk management arrangements:</p> <p>a) Head of Client Asset Oversight: This is a pre-approved control function: a senior individual must take responsibility and ownership for the investment firm’s compliance with the client asset obligations, and to ensure client asset issues are given priority and brought to the attention of the Board.</p> <p>b) Client Asset Management Plan: The Client Asset Management Plan is a document drafted by the Head of Client Asset Oversight and approved by the Board detailing the business model of the investment firm and the resulting risk of holding client assets including the processes and controls in place to mitigate those risks.</p>
Central Bank UCITS Regulations; Central Bank AIF Rulebook	<p>Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (S.I. No 420 of 2015) came into effect in November 2015.</p> <p>The regulations consolidate into one location all of the requirements which the Central Bank imposes on UCITS, UCITS management companies and depositaries of UCITS. They replace the Central Bank’s UCITS Notices and supplement existing legislative requirements, in particular the UCITS Regulations. The Central Bank UCITS Regulations contains those rules that the Central Bank is imposing on UCITS, UCITS management companies and depositaries. It does not repeat legislative requirements. In addition, effective 1 November, 2015, the Central Bank has restructured its guidance applicable to UCITS to reflect the publication of the Central Bank UCITS Regulations. The restructured UCITS guidance replaces the relevant guidance notes.</p> <p>A similar process is being undertaken to convert the Central Bank AIF Rulebook to Central Bank AIF Regulations.</p>

	<p>The main changes are:</p> <ul style="list-style-type: none"> <li>• The number of managerial functions has reduced from sixteen to six, namely: investment management; fund risk management; operational risk management; distribution; regulatory compliance; and capital and financial management;</li> <li>• The requirement that the same person must not perform managerial functions in relation to investment management and fund risk management or operational risk management;</li> <li>• The requirement that a director should be appointed with responsibility for organizational effectiveness.</li> <li>• The requirement that a UCITS Management Company and depositary prepare two sets of half-yearly accounts, one covering the first half of the year and the one covering the second half, in addition to the audited annual accounts (rather than just one set of half-yearly accounts). These must be submitted within two months of the relevant period end. The existing requirement for firms to submit annual audited accounts within four months of year end was retained.</li> </ul>
ICAV	<p>The ICAV Act 2015 was signed into law on 4 March, 2015. It provides an alternative legal structure for Irish authorized funds, both UCITS and AIFs. The ICAV was initiated in order to provide a more “bespoke” corporate solution designed to meet the needs of European investment funds and their investors. The ICAV Act provides for a corporate fund structure within a stand-alone piece of legislation which would not be impacted by amendments to European and domestic company legislation. It combines this with a number of features which are advantageous from a structuring and an administrative perspective, without affecting investor protection.</p> <p>In the case of funds established as investment companies, the Companies Registration Office acts as registrar under the Companies' Act 2014 and the Central Bank authorizes the investment company under relevant collective investment scheme legislation. However, under the ICAV Act, the Central Bank is responsible for registration of ICAVs. The Central Bank will deem it appropriate to make a registration order in respect of an ICAV provided that it is satisfied that the ICAV is, and will continue to be, in compliance with the ICAV legislation and any directions made by the Central Bank.</p> <p>The Central Bank’s authorization processes have been amended to incorporate funds intending to establish as ICAV. The Central Bank began accepting ICAV applications in March 2015. ICAVs which are AIFs are authorized by the Central Bank under the ICAV Act 2015. ICAVs which are UCITS are authorized by the Central Bank under the UCITS Regulations.</p> <p>Existing funds established as investment companies have the option of converting to ICAV status, while funds domiciled outside of Ireland can migrate into Ireland as ICAVs by continuation.</p>
IM Regulations	<p>Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers (S.I. No 105 of 2015), with effect from July 2016.</p> <p>The IM Regulations are set out under the following six headings.</p> <p>a) Segregation. A fund service provider or its nominee should physically hold or arrange for holding of IM separate from non-investor money. It should maintain accounting segregation between the fund service provider’s money and IM.</p>

	<p>b) Designation. A fund service provider should ensure that IM is clearly identified and separated in its internal records and in the records of third parties.</p> <p>c) Reconciliation. A fund service provider should keep accurate books and records to enable it, at any time and without delay, to provide an accurate record of the IM for each investor and the total held in the collection account. A fund service provider should conduct, on a daily basis, a reconciliation between its internal records and those external records of any third party with whom IM is held.</p> <p>d) Daily Calculation. Each working day a fund service provider should ensure that the aggregate balance of all collection accounts (IM resource) as at the close of business on the previous working day is equal to the amount it should be holding on behalf of investors (IM requirement).</p> <p>e) Risk Management. A fund service provider should ensure it applies systems and controls that are appropriate to identify risks in relation to IM and should put in place mitigants to counteract these risks.</p> <p>f) Investor Money Examination. A fund service provider must engage an external auditor to report at least annually on the fund service provider's safeguarding of IM.</p>
Investment Intermediaries Handbook	<p>Investment Intermediaries Handbook replaces the Handbook of Prudential Requirements for Authorized Advisors and Restricted Intermediaries introduced in July 2006. These changes are effective from 1 October, 2014.</p> <p>The Central Bank has imposed a requirement on all retail investment intermediaries to comply with Investment Intermediaries Handbook as a condition of their authorization. This requirement was imposed pursuant to Section 14 of the IIA.</p> <p>Some of the main changes in Investment Intermediaries Handbook include:</p> <ul style="list-style-type: none"> <li>• Multi-agency intermediaries and authorized advisors are now defined as investment intermediaries;</li> <li>• An investment intermediary must at all times be in a position to meet its financial obligations in full as they fall due;</li> <li>• Goodwill and other intangible assets are to be excluded from the calculation of a firm's balance sheet assets for regulatory reporting purposes;</li> <li>• The requirement to hold Professional Indemnity Insurance has been imposed directly on investment intermediaries (this mirrors the requirement for insurance intermediaries set out under the Insurance Mediation Regulations, 2005); and</li> <li>• An investment intermediary must notify the Central Bank in advance where it proposes to outsource any important operational function.</li> </ul>
Irish Funds Corporate Governance Code for Fund Service Providers	<p>Best practice guidance for directors of fund service providers is set out in the Irish Funds Voluntary Corporate Governance Code for Fund Service Providers (the IF Code), published in 2014.</p> <p>The purpose of the IF Code is to provide the board of directors of Administrators, Custodians and Depositories authorized and regulated by the Central Bank with a framework for good corporate governance and oversight. A firm's level of compliance with the IF Code should be disclosed in its Director's report.</p>

## B. Organizational and Supervisory Changes

### Markets Supervision Directorate

**15. The Markets Supervision Directorate's regulatory responsibilities cover:**

- (i) Supervision and Authorization of Investment Firms and Fund Service Providers;
- (ii) Safeguarding of Client Assets;
- (iii) Transaction Reporting and Market Surveillance;
- (iv) Supervision of Non-Financial Counterparties' (NFC) compliance with EMIR;
- (v) Market Abuse;
- (vi) Prospectus Approval;
- (vii) Transparency Regulation;
- (viii) Short Selling Regulation; and
- (ix) Supervision and Authorization of Collective Investment Schemes (UCITS and AIFs).

**16. The Directorate is comprised of two divisions:**

- Investment Firms and Funds Services Division (IFFS), responsible for the authorization and supervision of investment firms authorized under MiFID, non-retail investment business firms authorized under the IIA, and fund managers, administrators, and depositaries (fund service providers) authorized in Ireland, and safeguarding of client assets; and
- Securities and Markets Supervision Division (SMSD), responsible for the supervision of primary and secondary securities markets, authorization and supervision of collective investment schemes.

**17. Staffing levels are shown in the following table.** It is worth noting that over 75 percent of supervisors in the Markets Supervision Directorate commenced in their current role during the period since 2014. Thus, turnover has been considerable. Disruption is somewhat contained by the fact that many of the new staff have prior supervisory experience.

<b>Table 4. Ireland: Markets Supervision Directorate Staffing</b>				
<b>Staff groupings</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016 (Planned)</b>
Front-line supervisors	53	55	59	64
Projects	4	2	1	1
Investment Firm/Fund Service Provider Authorisation	9	7	7	7
Funds Authorisation	27	24	25	28
Market Surveillance	14	15	17	18
Corporate Finance	19	18	23	27
Supervisory Analytics	-	-	4	4
Client Assets	8	7	7	7
Divisional Operations (admin, reporting, policy, other)	19	13	15	16
Management	9	9	10	10
<b>Total</b>	<b>162</b>	<b>150</b>	<b>168</b>	<b>182</b>

**18. The work of the Markets Policy Division (MPD) in Policy and Risk Directorate is especially important in complementing that of the Markets Supervision Directorate.**

***Establishment of specialist teams in the Markets Supervision Directorate***

**19. Since the 2013 ROSC, the Markets Supervision Directorate has established a number of specialist support teams.** These specialist teams are designed to coordinate with and provide specialist support to supervisors in key areas (see below).

*Conduct Risk Team*

**20. The Central Bank has further strengthened its supervision of Conduct Risk by establishing a Conduct Risk Team in IFFS in 2014.** This specialist team assists the prudential supervisors in analyzing conduct of business rules for investment firms. In addition to assisting prudential supervisors on firm specific inspections, the Conduct Risk Team also carry out thematic conduct risk inspections and provide conduct specific training to prudential supervisors.

*Supervisory Analytics Team*

**21. The Supervisory Analytics team was established in SMSD in 2015 to develop both qualitative and quantitative techniques and processes to enhance productivity and gain greater insights from data collected on firms and collective investment schemes supervised by the Markets Supervision Directorate.** Activities include:

- Working in cooperation with other supervisory colleagues to develop analytical tools and risk dashboards;
- Management of datasets;

- Implementation of analytical, programming and scripting tools; and
- Testing and evidencing of various hypotheses related to market activity.

#### *Supervisory Practices and Regulatory Team*

**22. The Supervisory Practices and Regulation Team was established in September 2014 to coordinate and manage the practical implementation of policies impacting firms authorized and supervised within IFFS.** A key role of this team is to provide training and to ensure the consistent application of regulations, policies and supervisory practices across the division by working with and supporting supervisors within the division.

#### *IT Risk Supervisory Team*

**23. In the light of the themed supervisory work that the Markets Supervision Directorate conducted in 2015 related to cyber-security, a specialist IT Risk Supervisory Team was set up in early 2016.** This team is responsible for performing IT inspections to evaluate the internal IT structures and platforms of supervised entities, including the assessment of disaster recovery plans and assessment of information security practices and procedures of third party IT providers.

### **Consumer Protection Directorate**

**24. The Consumer Protection Directorate has responsibility for the supervision of conduct risk for the following types of firms supervised by the Central Bank including:**

- (i) Payment Institutions and Related Entities;
- (ii) Electronic money Institutions;
- (iii) Debt Management Firms;
- (iv) Moneylenders;
- (v) Insurance;
- (vi) Stockbrokers and Investment Firms;
- (vii) Retail Intermediaries;
- (viii) Credit Institutions and Other Lenders; and
- (ix) Credit Servicing Firms.

**25. In addition, the Consumer Protection Directorate is responsible for the prudential supervision and authorization of the following types of firms:**

- (i) Payment Institutions and Related Entities;
- (ii) Electronic money institutions;
- (iii) Debt Management Firms;
- (iv) Moneylenders;

- (v) Retail Intermediaries; and
- (vi) Credit Servicing Firms.

**26. The Directorate is comprised of two divisions:**

- Consumer Protection: Policy and Authorization is responsible for Authorization and Revocation of Retail Intermediaries, Payment Institutions and Related Entities, approval of bank charges, the authorization and supervision of Moneylenders, Policy, European Supervisory Authorities (ESAs) and International, Market Intelligence and Research.
- Consumer Protection Supervision Division is responsible for the supervision of the types of firms listed above.

**27. Staffing levels are shown in the following table:**

<b>Table 5. Ireland: Consumer Protection Directorate Actual and Projected Staffing</b>				
<b>Staff Groupings</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016 Projected</b>
Supervisors <sup>6</sup>	44.8	45.8	46.0	51.0
Authorizations <sup>7</sup>	15.6	13.6	18.6	18.6
Other (Operations, Section 149, Market Intelligence & Research, Policy & Management)	21.7	22.7	24.3	26.3
<b>Total</b>	<b>82.1</b>	<b>82.1</b>	<b>88.9</b>	<b>95.9</b>

**28. Outside the Central Bank, some of the main relevant institutions include:**

- The Irish Auditing and Accounting Supervisory Authority (IAASA) is the supervisory authority to: (a) supervise how the Prescribed Accountancy Bodies (PAB) regulate and monitor their members; (b) promote adherence to high professional standards in the auditing and accountancy profession; (c) monitor whether the accounts of certain classes of companies and other undertakings comply with the Companies Acts; and (d) act as a specialist source of advice to the Minister.
- The Competition and Consumer Protection Commission (CCPC) to: (a) protect and strengthen competition; (b) empower consumers to make informed decisions; and (c) protect them from harmful business practices.

<sup>6</sup> Intermediaries, Payment Institutions, Electronic Money, Bureau de Change, Debt Management, Retail Credit firms, Credit servicing firms - prudential & conduct supervision. Banking, Insurance, investment-conduct supervision only.

<sup>7</sup> Intermediaries, payment institutions, and electronic money, debt management, retail credit, and credit servicing firms.



- The Irish Takeover Panel: responsible for monitoring and supervising takeovers and other relevant transactions in companies in Ireland.
- The Financial Services Ombudsman to deal independently with complaints from consumers about their individual dealings with all financial services providers.
- Investor Compensation Company Ltd to put in place arrangements (e.g., funding and payment procedures) to ensure that eligible clients of a failed firm receive compensation.

## C. Changes in Supervisory Framework and Practice

### Review and revision of the Probability Risk and Impact System (PRISM) model

**29. In 2014, a review of the PRISM Medium Low Engagement Model took place.** The PRISM engagement model sets out the minimum engagement which the Central Bank has declared it will have with regulated firms.<sup>8</sup> The amended model ensures that supervisors meet with the Chief Executive Officers of all Medium Low Impact firms more frequently (typically on an annual basis, compared to at least every 18 months previously). Other relevant firm officers are engaged as needed, with meetings with the Chairman and senior non-executive directors taking place on a regular basis.

### Themed Reviews and Inspections

**30. Themed reviews and inspections allow for review, assessment and mitigation of risks which have been identified in various industry sectors and across individual firms through supervisory engagement.** They are a key element of the Central Bank's risk-based approach to supervision particularly in relation to low impact firms. They can comprise both desk based and on-site work. Themed reviews predominantly feature desk-based review of documentation and data whilst themed inspections typically place more emphasis on-site based inspections. In addition to planned inspections, the Central Bank also conducts additional reactive inspections on key issues and themes as they arise throughout the year. The findings and outcomes of themed reviews and inspections may include changes in policy, specific risk mitigation measures, enforcement actions/directions, speeches and industry letters addressing such aspects as best practice. Recent themed reviews are listed in Table 5 below:

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<sup>8</sup> PRISM is the Central Bank's risk-based framework for determining supervisory priorities and related matters. A further review was underway at the time of writing.

**Table 6. Ireland: Schedule of themed reviews and inspections 2013–2015**

Date	Theme
2013 & 2014	Monitoring and Reporting of Suspicious Transactions related to market abuse
2013 & 2014	Data Integrity
2013, 2014 & 2015	Breach / Error Log Themed Inspection (Quarterly Themed Inspections)
2013	Review of Governance on Pricing Procedures for Hard To Value Assets
2013	Review of the Oversight of Money Market/Short-Term MMFs
2013	Monthly Client Asset Return Analysis and Governance Arrangements with regard to Client Asset Accounts
2013	Management Company Business Plan Application
2014	Corporate Governance of Investment Managers and Fund Managers
2014	Final NAV Outsourcing review
2014	Review of the Calculation Methodologies of Synthetic Risk and Reward Indicator Numbers by UCITS Funds
2014	Review of Sales Incentives to direct employees of Insurance Companies, Credit Institutions and Investment Firms
2014	Provision of Information to Clients in Relation to Costs and Charges
2014	Review of the Practices and Oversight by Depositories of the Use of Financial Derivative Instruments (FDI's) by UCITS Funds
2014	Fair Presentation of Recommendations
2014	Monthly Client Asset Return Analysis / Review of the Daily Reconciliation Process
2015	Treatment of NAV Pricing Errors
2015	Managing Cyber Security - Operational Risk
2015	Proprietary Trading
2015	Review of Money Market/Short-Term Money Market Funds (MMF's) in low yield environment
2015	Review of Securities Lending Practices by Investment Funds
2015	Review of the Impact on Irish Authorized Investment Funds of Volatility in the Chinese Stock Markets
2015	Review of the Implementation of Risk Management Process (RMP's) by UCITS Funds
2015	Financial Contracts for Difference
2015	Depository Oversight
2015	Client Categorization
2015	Conflicts of Interest
2015	Intermediaries not authorized to hold Client Assets
2015	Notification of Managers' Transactions
2015	Suspicious Transaction Monitoring and Reporting
2015	Review of Firms Not Meeting Minimum Standards of Compliance

### ***Regulatory Economics Unit***

#### **31. The Regulatory Economics Unit was set up in 2012 for the purposes of:**

(a) understanding the economic impact of regulation; (b) monitoring the regulatory perimeter; (c) conducting system level analysis of the risks in the Irish international financial services industry; and (d) understanding the system level interconnections between the Irish international financial services and other jurisdictions. Some of the recent outputs of the Regulatory Economics Unit include:

- Mapping of the activities of Financial Vehicle Companies and Special Purpose Vehicles (SPVs);
- Using EMIR derivatives reporting data to understand the network structure of entities which buy and sell Credit Default Swap contracts;
- Reducing data gaps in the non-bank financial sector in Ireland through existing regulatory tools e.g., introducing a reporting requirement for non-FVC SPVs as a result of research carried out on their activities;
- Research on the economic benefits and risks related to virtual currencies and payments technologies; and
- Using AIFMD reporting data combined with EMIR data to understand potential risks.

### **Enforcement actions**

**32. An increasing number of enforcement actions have been taken against low impact firms (Table 6).** The cases which have been referred to the Enforcement Division have related, for example to:

- Capital adequacy of an investment firm;
- Breaches of the client classification requirements and acting as an Investment Firm without authorization, trading on own account without authorization and conduct of business breaches;
- Money Laundering and Terrorist Financing;
- Insider dealing;
- Complaints handling procedures; and
- Minimum Competency Requirements.

<b>Table 7. Ireland: Enforcement Action</b> (2011–2015)					
	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
All Central Bank pre-referrals <sup>9</sup>	72	98	48	59	48
Markets Supervision Pre-Referrals	41	35	28	24	26
Cases Accepted	20	25	25	17	16
Supervisory Warnings	5	7	13	5	3
Settlements	5	3	8	4	5
Aggregate Fine (Euro)	190,000	161,900	247,590	360,900	583,040
Revocation of Authorization	1	0	0	2	7
Voluntary Revocations	0	0	2	4	1
Refusals <sup>10</sup>	1	1	0	0	2
Markets: No Action <sup>11</sup>	4	3	3	3	1

### **Fitness and Probity**

**33. Since July 2013, the Enforcement Division has liaised closely with the Markets Supervision Directorate and Consumer Protection Directorate in relation to fitness and probity concerns.** This work has included assistance with inspections of, and correspondence with, firms to assess compliance with their obligation to ensure persons in controlled functions are fit and proper. The Enforcement Division advises supervisory directorates where potential fitness and probity concerns arise regarding relevant appointments and advises where necessary in relation to refusals of those appointments. The Enforcement Division has also assisted and advised the Consumer Protection Directorate in the conduct of a fitness and probity investigation.

### **Co-operation with partners in other countries**

**34. The Central Bank actively engages with partners in other countries through co-operation with peer regulators and associations of regulatory bodies, notably in the area of systemic risk analysis (Box 2).** The Central Bank is engaged with IOSCO through its participation on both the European Regional Committee and a number of committees that have a secondary markets and investment funds focus since the early 1990s. The Central Bank is represented on each of the Standing Committees of European Securities and Markets Authority (ESMA), which deal with such issues as market structure, investor protection, investment management, market integrity, financial innovation, corporate reporting and corporate finance. The Central Bank actively

<sup>9</sup> This row includes all referrals from the supervisory divisions of the Central Bank.

<sup>10</sup> Refusals include Refusals of Authorisations and Refusals of Acquiring Transactions.

<sup>11</sup> These were concluded with no enforcement action taken.

participates on a wide selection of ESMA subgroups. Peer Reviews are conducted by the Supervisory Convergence Standing Committee of ESMA.

### Box 2. Systemic Risk Analysis and International Cooperation

Since 2013, the Central Bank has implemented the following strategy to address the potential systemic risk of international financial services. This involves six elements:

- *The implementation of a data strategy* that allows the Markets Supervision Directorate to use data collected by all divisions of the Central Bank that is relevant to the monitoring of markets, investment firms and investment vehicles and the development of applications and analytical tools to support macro- and micro-prudential supervision.
- *Effective coordination of supervisors, policy makers, statisticians and economists through an internal 'Task Force on Shadow Banking'*: in September 2014 the Central Bank's Financial Stability Committee (FSC) approved the terms of reference for an internal working group on shadow banking – the Task Force on Shadow Banking. The Task Force coordinated the Central Bank's participation in the FSB Global Shadow Banking Monitoring Report in 2015.
- *The development of innovative supervisory techniques such as a liquidity risk supervisory tool being developed by the Markets Supervision Directorate Analytics team*: SMSD is currently researching alternative methods for liquidity stress testing of investment funds. This work entails the categorization of investment funds by investment/redemption strategy, evaluation of potential liquidity stress testing methodologies for the different fund categories identified, and providing support to the IMF in the FSAP process.
- *Participation in the FSB annual monitoring exercise*: In 2015, Ireland contributed for the first time to the annual FSB's Global Shadow Banking Report through a Central Bank case study on the Irish shadow banking sector. The case study gave a detailed statistical breakdown of the sector, its size and linkages to the domestic and international economies.
- *Chairing the ESRB Shadow Banking Policy Committee and advocating for the prompt development of coordinated supervisory policies on shadow banking issues through the ESRB (e.g., on Loan Origination and on the development of European policy for defining 'significant' leverage for alternative funds)*: In that context, the policy Task Force Chaired by the Central Bank is leading work on assessing the need to develop macro-prudential tools in relation to investment fund leverage and liquidity.
- *Taking a leading role in IOSCO in developing policies in relation to liquidity and leverage*: The Central Bank currently chairs a working group within IOSCO's Committee 5 on Investment Management focused on liquidity risk management in collective investment schemes.

## UPDATE ON REGULATIONS AND SUPERVISION IN RELATION TO IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

35. Principles and recommendations are included below only if they relate to a regulatory or supervisory change that has been made since the time of the 2013 assessment, or that has been decided and will be implemented in the near future. Some prospective developments—such as the establishment of a European Capital Markets Union—may have a profound effect on the regulation and supervision of securities markets in Ireland, but at the time of writing are too ill-defined in scope and timing to be included here. Recommendations from the 2013 assessment on which no action has been taken are excluded.

<b>Table 8. Ireland: Update on Securities Regulation and Supervision Relative to the IOSCO Objectives and Principles</b>	
Principle 2 - The Regulator should be operationally independent and accountable in the exercise of its functions and powers.	2013 Assessment: Partly Implemented
<i>2013 Assessment Recommended Action:</i> Consideration should be given to including provisions permitting the Central Bank to indemnify staff, officers and Commissioners for their legal costs in the event they are sued in relation to Central Bank duties and make those moneys available to pay costs during the course of the suit.	
The Central Bank has a 'witness support' policy introduced in late 2013 whereby it pays the reasonably incurred legal costs of staff who are involved in legal actions (as a witness or otherwise) arising from their role in the Central Bank. This policy was and has been used in relation to various personnel who have been called as witnesses at criminal trials and the banking inquiry.	
Principle 3 - The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	2013 Assessment: Partly Implemented
<i>2013 Assessment Recommended Action:</i> The government should give the Central Bank additional resources and the flexibility to depart from the civil service compensation rules.	
Since 2013 headcount in the Central Bank has increased, and is projected to further increase. Headcount in financial regulation has increased from 612 in 2013 to 736 by end 2015. This includes an increase in staff in the Markets Supervision Directorate from 162 in 2013 to 168 by end 2015.	
Headcount in Financial Regulation in the Central Bank is projected to increase further by the end of 2016. This includes a projected increase to 182 staff within the Markets Supervision Directorate.	
Principle 4 - The Regulator should adopt clear and consistent regulatory processes.	2013 Assessment: Broadly Implemented
<i>2013 Assessment Recommended Action:</i>	

The process of official consolidation of the laws for public use needs to be accelerated. In the meantime, a competent authority in the State or some part of the government should prepare and post 'unofficial' consolidated versions of the key financial services acts and regulations.	
The Companies Act 2014 consolidated the Companies Act 1963 to 2013.	
Other changes to regulatory framework/supervisory framework	
<i>Supervisory Practices and Regulatory Team:</i>	
The Supervisory Practices and Regulation Team was established in September 2014 to ensure the consistent application of regulations, policies and supervisory practices across IFFS.	
Principle 5 -The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.	2013 Assessment: Fully Implemented
<i>2013 Assessment Recommended Action:</i>	
Publish the Employee Code of Ethics on the website so that the public are informed of the high standards of ethical behavior that Central Bank staff is expected to meet.	
The Employee Code of Ethics and Behaviour was published on the Central Bank website on 11 February, 2016.	
<b>Principle 6</b> - The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.	2013 Assessment: Fully Implemented
<i>CRD IV:</i>	
CRD IV has improved the monitoring of systemic risk through the introduction of additional reporting requirements for investment firms. CRD IV has also improved the management of systemic risk through the introduction of a capital buffer for systemically important institutions. There is a requirement to report certain information regarding systemic risk to the EBA.	
Several possible sources of systemic risk have been investigated through Central Bank-wide analysis.	
<i>EMIR:</i>	
EMIR introduces new requirements to improve transparency and reduce the risks associated with the derivatives market including systemic risk by providing the Central Bank with access to trade repository data on all derivative contracts concluded by counterparties within its remit thereby enabling the Central Bank to monitor derivative exposures at micro and macro level.	
<i>MiFID II:</i>	
MiFID II / MIFIR will introduce controls to reduce systemic risk and speculative activity in commodity derivatives markets through the imposition of new position limits and management powers by trading venues and competent authorities and the granting of additional intervention powers to ESMA. In addition, the operator of a regulated market shall ensure that all transactions in derivatives (that are concluded on that regulated market) are cleared by a CCP.	

<b>Principle 7</b> - The Regulator should have or contribute to a process to review the perimeter of regulation regularly.	2013 Assessment: Fully Implemented
<p><i>Research:</i></p> <p>Since 2013, the Central Bank has implemented the following strategy to address the potential systemic risk of international financial services. This includes:</p> <ul style="list-style-type: none"> <li>• The implementation of a data strategy which allows the Markets Supervision Directorate to use data collected by all divisions of the Central Bank that is relevant to the monitoring of markets, investment firms and investment vehicles, the development of applications and analytical tools to support macro- and micro-prudential supervision, and the identification of innovations affecting the appropriate perimeter of regulation.</li> <li>• Effective coordination of supervisors, policy makers, statisticians and economists through an internal 'Task Force on Shadow Banking,' so as to be better able to review the perimeter of regulation;</li> <li>• The development of supervisory techniques such as a liquidity risk supervisory tool being developed by the Supervisory Analytics team; and</li> <li>• Participation in the FSB annual monitoring exercise.</li> </ul>	
<b>Principle 8</b> - The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.	2013 Assessment: Fully Implemented
<p><i>CRD IV:</i></p> <p>CRD IV added to the remuneration requirements of CRD III through the introduction of a bonus cap to reduce the level of variable remuneration paid to risk takers within investment firms. The EBA issued Guidelines on how the remuneration requirements are to be applied on 21 December, 2015.</p> <p><i>AIFMD/UCITS:</i></p> <p>ESMA 'Guidelines on sound remuneration policies under the AIFMD' in relation to the remuneration policies and practices of AIFMs and their identified staff issued in July 2013. The AIF Rulebook requires Irish authorized AIFM to comply with these guidelines. UCITS V requires that management companies establish and apply remuneration policies and practices consistent with and promoting sound and effective risk management, not encouraging risk-taking and applying to staff whose professional activities have a material impact on the UCITS that they manage.</p> <p>ESMA issued 'Guidelines on sound remuneration under the UCITS Directive and AIFMD' on 31 March, 2016. The UCITS remuneration guidelines contained therein will apply, subject to stated transitional provisions, from 1 January, 2017.</p> <p><i>MIFID II:</i></p> <p>MiFID II will introduce the following additional requirements for investment firms in respect of conflicts of interests:</p>	



<ul style="list-style-type: none"> <li>• a requirement to maintain a formal remuneration policy (approved and overseen by senior management) aimed to encourage responsible business conduct, fair treatment of clients and to avoid conflicts of interest;</li> <li>• a requirement to ensure that firms do not remunerate or assess the performance of staff in a way that conflicts with clients' best interests or which incentivizes staff to recommend particular financial instruments to retail clients which are not best suited to their needs; and</li> <li>• a requirement to prevent and manage conflicts of interest as well as increased disclosure requirements.</li> </ul>	
Principle 10 - The Regulator should have comprehensive inspection, investigation and surveillance powers.	2013 Assessment: Fully Implemented
<p><i>EMIR:</i></p> <p>EMIR Regulations have introduced powers for authorized officers to monitor compliance with EMIR. An authorized officer can enter a place without prior notice to ensure obligations in relation to clearing and risk mitigation are being complied with.</p> <p>Any counterparty in the State that enters into derivative contracts is required to report the details of any derivative contract (including exchange traded contracts) they have concluded and of any modification or termination of the contract to an ESMA-registered trade repository. These details must be reported no later than the working day following the conclusion, modification or termination of the contract and include the details set out in EMIR. A trade repository is required to make available to the Central Bank all derivative contracts where an Irish entity is counterparty to a derivative contract. In addition, a trade repository is also required to make available all derivative contracts where the underlying falls within the scope of the Central Bank's supervisory responsibilities and mandate.</p> <p><i>MiFID II/MiFIR:</i></p> <p>MiFID II/MiFIR was meant to apply from 3 January, 2017, but it is expected that implementation will be delayed by 12 months. Associated draft regulatory technical standards are currently being prepared at European level. The transaction reporting regime will be standardized throughout the EU. The scope of transaction reporting will increase to include additional financial instruments, further data on transactions, and be extended to more trading venues and firms. The Central Bank has initiated a project to update relevant systems.</p>	
Principle 11 - The Regulator should have comprehensive enforcement powers.	2013 Assessment: Fully Implemented
<p><i>UCITS V:</i></p> <p>UCITS V introduces new rules relating to sanctions in order to harmonize the administrative penalties that can be imposed across Member States, apply minimum types of penalties and measures that are applicable and introduce criteria which must be taken into consideration when determining the type and level of sanction(s) that should be imposed.</p> <p>Under the new rules, Member States can impose either criminal or administrative sanctions for an infringement of national provisions such as public statement, cease and desist order,</p>	

suspension/withdrawal of authorization or temporary/permanent ban. UCITS Managers and Depositories are also required to put in place appropriate whistle blowing procedures to report infringements. Ireland already has a sanctions regime in place which will be mapped against the new rules by the Department of Finance in order to see whether any additional powers may be required.

*EMIR:*

The Central Bank has been provided with functions and powers (including the ability to impose sanctions) to enforce compliance with EMIR and the EMIR Regulations. An independent assessor regime has been designed to provide for the investigations of potential breaches by FCs and NFCs of EMIR Title II (obligations to clear, report, and mitigate the risks of OTC derivatives) and/or the EMIR Regulations. Where the Central Bank has reason to suspect, based on reasonable grounds, that a prescribed contravention is being committed or has been committed by a person, the Central Bank may appoint an assessor to conduct an assessment of whether or not such person has committed or is committing such a contravention. This independent assessor regime is similar to the model provided for in MAD.

*MiFID II:*

MiFID II imposes greater consistency across the EU in relation to sanctions and penalties. Competent Authorities will have new specific sanctions available to them, including:

- removal of a board member;
- potential criminal sanctions;
- maximum fines of up to 10 percent of annual turnover or at least €5m, and at least twice the benefit derived (where this can be determined); and
- application of sanctions to individuals as well as management bodies.

*Transparency Directive:*

Sanctioning powers will be enhanced with common standards to be introduced across the EU regarding the type of sanctions, the addressees of same, and the criteria to be taken into account when applying sanctions and the level of fines. In the Irish context, this will result in the level of pecuniary sanctions that apply to breaches of the Transparency Regulations being amended from €2.5m to €10m or 5 percent of annual turnover for legal entities and €2m for legal persons. Provision will also be made for pecuniary sanctions to be based on a multiple of the profit gained or losses avoided if this is greater. In addition, the Central Bank will have the power to suspend the exercise of voting rights where persons fail to disclose major holdings of voting rights (see Principle 17 below). Compliance will also be enhanced by the requirement that sanctions should normally be published as publication should have a dissuasive effect and also provide information regarding behavior considered to be a violation of the Transparency Regulations.

Principle 12 - The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

IMF Assessment:  
Partly Implemented

<p><i><u>2013 Assessment Recommended Action:</u></i></p> <p>A more proactive approach to supervision of firms designated by PRISM as Low Impact should be implemented.</p>
<p>The Markets Supervision Directorate has increased the intensity of supervision of Low Impact regulated entities since 2013. The following measures have been undertaken to achieve this:</p> <ul style="list-style-type: none"> <li>• Supervisory teams have grown as a result of Headcount increases;</li> <li>• The volume of themed inspections has sharply increased with the result that Low Impact firms are subject to more frequent supervisory engagement;</li> <li>• The number of enforcement referrals in respect of Low Impact firms has increased;</li> <li>• With the creation of the Supervisory Analytics team in 2015, the Markets Supervision Directorate has substantially overhauled its use of regulatory data with a view to using this data to proactively monitor Low Impact firms, identify risks and take supervisory action.</li> </ul> <p>Enforcement data (see above) demonstrate a positive trend in the period 2013–2015 for Low Impact firms in terms of Markets Supervisory Warnings and Settlements expressed as a percentage of Market Cases referred to the Enforcement Division, from 37.5 percent to 50 percent.</p>
<p><i><u>2013 Assessment Recommended Action:</u></i></p> <p>More prosecutions should be pursued against individuals.</p>
<p>Across all sectors, the Central Bank has taken a number of actions against individuals in 2015, who held positions of responsibility in credit institutions, insurance undertakings and intermediaries, and financial service providers.</p>
<p>Other changes to regulatory framework/supervisory framework</p>
<p><i>UCITS V:</i></p> <p>As referenced in Principle 11 UCITS V will introduce new rules relating to sanctions in order to harmonize the administrative penalties.</p> <p><i>EMIR</i></p> <p>The newly established EMIR Unit will conduct periodic reviews of particular aspects of compliance with the EMIR requirements. An example of such a review will be compliance with the Data quality requirements.</p> <p><i>MiFID II</i></p> <p>MiFID II imposes greater consistency across the EU in relation to sanctions and penalties, as outlined in Principle 11.</p>

*Establishment of specialist teams*

As referenced in Section 2, the Markets Supervision Directorate has established specialist teams in the areas of Conduct Risk, Supervisory Data Analytics, IT Risk and Supervisory Practices and Regulation in order to enhance the effectiveness of its supervision of regulated firms.

*PRISM review:*

Engagement Model for Medium Low firms has been enhanced by placing increased focus on meetings with CEOs. CEO meetings will now take place with increased frequency.

Principle 16 – There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions.

2013 Assessment:  
Partly Implemented

*2013 Assessment Recommended Action:*

A change in auditor should be considered to be a material change that gives rise to an obligation for all public companies to immediately inform the relevant authorities, both IAASA and the Central Bank.

Under various sectoral financial services regulations, in respect of all regulated financial service providers, the Central Bank will be notified of the change of auditor.

Under Section 404 of the Companies Act 2014, IAASA must be informed if the auditor has changed within 30 days in the event of the cessation of office by an auditor, whether by resignation or removal from office, by both the auditor and the company.

*Amendments to the Transparency Directive:*

The requirement for issuers of equity and closed ended funds admitted to trading on a regulated market to produce interim management statements was abolished in November 2015. In addition, the timeframe for publishing half-yearly financial reports will be extended for all issuers from two to three months after the end of the reporting period. These changes are meant to improve the attractiveness of markets to small and medium sized issuers seeking to raise capital by reducing the administrative burden and short-term pressures imposed on such issuers, and also aim to incentivize both issuers and investors to adopt a longer term strategic approach.

Notwithstanding the removal of the obligation to prepare interim management statements, the Central Bank will have the ability to require issuers to publish periodic financial information on a more frequent basis than the half-yearly and annual financial report in certain circumstances (e.g., in the case of financial institutions or if the additional information is highly relevant to factors that contribute to investment decisions).

Sanctioning powers will be enhanced, with common standards to be introduced across the EU regarding the type of sanctions, the addressees of same, the criteria to be taken into account when applying sanctions, and the level of fines. Further details are provided under Principle 11 above.

Principle 17 - Holders of securities in a company should be treated in a fair and equitable manner.	2013 Assessment: Broadly Implemented
<i>Amendments to the Transparency Directive:</i>	
<p>Transparency Directive II will extend the range of financial instruments that have to be included when determining if a disclosure of a major holding of voting rights is required. Instruments with a similar economic effect to holding shares and entitlements to acquire shares are now to be included in such calculations. Otherwise these instruments could be used to acquire significant economic interest in companies without disclosure, which could facilitate market abuse and present a false or misleading representation of economic ownership of the relevant companies.</p>	
<i>MAD II/MAR:</i>	
<p>Procedures for notification to the market of transactions by persons discharging managerial responsibility in an issuer will be strengthened under MAR. Publication of notifications will have to take place within 3 days of a transaction as opposed to five days currently. Issuers will have direct responsibility for publication under the Regulation (currently a requirement under the Central Bank Market Abuse Rules). PDMRs and persons closely associated with them will have to notify both the Central Bank and the issuer, using an electronically transmitted, standardised form.</p>	
Principle 18 – Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.	2013 Assessment: Fully Implemented
<i>Amendments to the Transparency Directive:</i>	
<p>S.I. No. 44 of 2015 Transparency (Directive 2004/109/EC) (Amendment) Regulations 2015 amend the Transparency Regulations to allow IAASA as competent authority responsible for examination of the content of annual and half-yearly financial reports of issuers coming within the remit of the Transparency Regulations, to make public (i) any administrative measure taken as a result of infringements discovered by IAASA; and (ii) any action by an issuer or director in response to an administrative measure taken by IAASA. This disclosure should have a dissuasive effect and also provide information regarding what constitutes a violation of the relevant provisions.</p>	
Principle 19 – Auditors should be subject to adequate levels of oversight.	2013 Assessment: Broadly Implemented
<i>The Companies Act 2014:</i>	
<p>Section 907(1) of the Companies Act 2014 has reduced the size of the board of directors of IAASA from 15, including the CEO to not more than 8 directors plus the CEO.</p>	
Principle 20 – Auditors should be independent of the issuing entity that they audit.	2013 Assessment: Fully Implemented

<i>The Companies Act 2014:</i>	
The Companies Act 2014 extends the requirement to have an Audit Committee to large public companies, as defined under Section 167(1) (a) and (b) of the Companies Act 2014.	
Principle 24 – The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.	2013 Assessment: Fully Implemented
<i>UCITS V:</i>	
As described above, the Central Bank’s enforcement powers have been strengthened by the new UCITS V sanctions regime. This means that the Central Bank’s powers with respect to remedial action in the event of breach or default may also be strengthened.	
Principle 25 – The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.	2013 Assessment: Fully Implemented
<p>In March 2015 the Central Bank adopted local legislation, the IM Regulations, issued pursuant to Section 48 of the Central Bank (Supervision and Enforcement) Act 2013 in relation to the holding of IM. Any Fund Service Provider (as defined in the IM Regulations) holding IM, for the purpose of subscription or redemption into a collective investment scheme, in a collection account must do so in accordance with the IM Regulations. The IM Regulations take effect 1 July, 2016.</p> <p>The IM Regulations are set out under six headings which the Central Bank regards as the six core IM Principles of an IM regime. These principles are designed to provide for the segregation and protection of IM. The principles are Segregation, Designation, Reconciliation, Daily Calculation, Risk Management and IM Examination.</p> <p>The CA Regulations were also introduced with effect from 1 October, 2015, and replaced the Client Asset Requirements 2007. The CA Regulations apply to investment firms permitted to hold client assets. The main changes introduced by the CA Regulations are as follows (see also Principles 29 and 31):</p> <ul style="list-style-type: none"> <li>• Investment firms will no longer be permitted to hold discretionary buffer amounts in client asset accounts;</li> <li>• Investment firms will be required to appoint a staff member to fill a pre-approved control function with cross-functional responsibility for client assets;</li> <li>• Investment firms will be required to document a Client Asset Management Plan, which is approved by the board. The Client Asset Management Plan will document the risks to holding client assets and outline how these risks are mitigated;</li> <li>• Increased disclosure including the provision of Client Asset Key Information Document to retail clients setting out arrangements and risks in plain English; and</li> <li>• The introduction of a more detailed annual review of client asset arrangements to be conducted by external auditors.</li> </ul>	

Principle 27 – Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.	IMF Assessment: Broadly Implemented
<p><u>2013 Assessment Recommended Action:</u> The Central Bank should issue clear guidance that the valuation of CIS assets are to be performed in accordance with IFRS or UK and Irish GAAP, or some other high quality accepted accounting standard applied on a consistent basis.</p>	
<p>There are two types of valuations which are relevant for CIS:</p> <ul style="list-style-type: none"> <li>i. valuations for the purposes of subscriptions and redemptions (which lead to the production of NAVs); and</li> <li>ii. valuations in periodic accounting disclosures.</li> </ul> <p>With respect to (i) above, the AIFMD Level 2 includes detailed requirements regarding the valuation of the assets of AIFs. In addition, the Central Bank has issued rules and guidance in relation to the valuation of assets leading to the production of NAVs. These rules and guidance are included in the AIF Rulebook and the Central Bank UCITS Regulations. The rules and guidance conform to all the relevant EU legislation and IOSCO principles such as on specific regulatory requirements for valuation of CIS assets, including <i>inter alia</i> regulatory requirements that the NAV of CIS be calculated on a regular basis and in accordance with high quality, accepted accounting standards, that fair valuation of assets is used where market prices are not available, and that independent auditors are required.</p> <p>With respect to (ii) above, all regulated investment funds must prepare a set of audited financial statements on an annual basis in accordance with the provisions of the Companies Acts 2014. The Companies Acts 2014 requires that such financial statements must be prepared in accordance with international financial reporting standards or an alternative body of accounting standards. Moreover, the UCITS Regulations defines alternative body of accounting standards as meaning standards that accounts of companies or undertakings shall comply with that are laid down by such body or bodies having authority to lay down standards of that kind in (i) United States of America; (ii) Canada; (iii) Japan; or (iv) any other state or territory prescribed, in accordance with section 1400(2) of the Companies Act 2014.</p>	
<p><u>2013 Assessment Recommended Action:</u> The Central Bank should publish rules relating to pricing errors.</p>	
<p>The Central Bank concluded a thematic review on the treatment of NAV pricing errors in 2015. The required amendments to regulations and/or guidance are now under consideration.</p>	
Principle 29 - Regulation should provide for minimum entry standards for market intermediaries.	2013 Assessment: Fully Implemented
<p><u>2013 Assessment Recommended Action:</u> The Central Bank should supplement the information made available to the public on the register of firms posted on its website to add: 1) the permitted activities for each investment product intermediary under the IIA; and 2) the identity of senior management and names of other authorized individuals who act in the name of a MiFID investment firm or an IIA firm.</p>	

The register of investment product intermediaries maintained in accordance with section 31(4) of the IIA lists entities, which holds letters of appointment from product producers as defined in the IIA. Entities included on this register which fall within the definition of an investment product intermediary are Investment Business Firms (investment intermediaries and Certified Persons) and Solicitors. While the information contained on this register does not include the permitted activities for these entities, the permitted activities for the investment intermediaries are contained on other registers, namely Registers of Investment Business Firms authorized or deemed authorized under the IIA. The Central Bank intends to include a cross-reference on the Section 31 register to inform persons to refer to the Register of Investment Business Firms in order to check the permitted legal activities of investment intermediaries in 2016Q3.

Persons accessing the register section of the Central Bank website may search the name of financial service provider or collective investment scheme directly, which will generate all information available including the permitted activities of investment intermediaries contained in the Register of Investment Business Firms.

It is not the Central Bank's policy to disclose the names of approved persons under the Fitness & Probity Regime on our public registers. It does not have the legal power or obligation to do so and there are also data protection issues with this type of disclosure.

#### *CRD IV:*

CRD IV changed the definition of an investment firm compared to CRD III, consequently certain investment firms are not within the scope of CRD IV but remain within the scope of the Pillar I and Pillar 2 requirements of CRD III. CRD IV also made slight amendments to the initial capital requirements for firms within the scope of that regime.

#### *CA Regulations & IM Regulations:*

Client Asset Requirements 2007 have been revoked and replaced with the CA Regulations. As a result of the introduction of the IM Regulations, in the case of IIA Non Retail Intermediaries and other categories of fund service providers, permission to hold IM will be considered as part of the application process. Where an IIA Non Retail Intermediary is deemed as holding IM, the IM Regulations will be applied.

The IM Regulations are set out under six headings which the Central Bank regards as the core principles of an IM regime: Segregation, Designation, Reconciliation, Daily Calculation, Risk Management and IM Examination. These principles are designed to provide for the segregation and protection of IM.

Where an entity is subject to IM Regulations or CA Regulations, it is required to have an external auditor assess, annually, its compliance with the regulations and provide the report to the Central Bank.



The scope of the Client Asset Specialist Team has been widened to include the supervision of both the CA Regulations and IM Regulations.

*The Investment Firms Corporate Governance Code:*

It is intended that an Investment Firms Corporate Governance Code will be introduced on a statutory basis with the introduction of MiFID II. This Code will introduce new requirements in relation to Board composition, functioning, review and committees, to complement strengthened corporate governance requirements under MiFID II and CRD IV as well as those set out in the Central Banks corporate governance code for Credit Institutions and Insurance Undertakings. However, the timing of this action was not decided at the time of writing.

*MiFID II:*

MiFID II broadens the scope of MiFID by bringing new activities into scope, removing or narrowing exemptions (e.g. dealing on own account) and covering new financial instruments (e.g., commodity derivatives and a wider range of products (e.g., structured deposits). Consequently, some firms that are currently outside the scope of MiFID will need to apply for authorization. Other changes include: the introduction of a new category of OTFs, new transparency and reporting requirements, enhanced conduct of business and investor protection rules, new organizational requirements, rules governing third country firms operating in the EU via a branch.

Principle 30 - There should be initial and on-going capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	2013 Assessment: Fully Implemented
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*CRD IV:*

The implementation of CRD IV has introduced revised and new capital requirements for market intermediaries in the following areas:

- the quality and quantity of capital held by investment firms;
- capital buffers;
- leverage requirements;
- Securitization Risk Retention Requirements; and
- revised rules for counterparty risk.

*Investment Intermediaries Handbook:*

Investment Intermediaries Handbook was effective from 1 October, 2014, and replaced the Handbook of Prudential Requirements for Authorized Advisors and Restricted Intermediaries introduced in July 2006. The changes include the following:

- Multi-agency intermediaries and authorized advisors are now defined as investment intermediaries;
- An investment intermediary must, at all times, be in a position to meet its financial obligations in full as they fall due;

- Goodwill and other intangible assets are to be excluded from the calculation of a firm's balance sheet assets for regulatory reporting purposes;
- The requirement to hold Professional Indemnity Insurance has been imposed directly on investment intermediaries (this mirrors the requirement for insurance intermediaries set out under the Insurance Mediation Regulations, 2005); and,
- An investment intermediary must notify the Central Bank in advance where it proposes to outsource any important operational function. An "Important Operational Function" is defined by the July 2014 Prudential Handbook as one such that "if a defect or failure in its performance would materially impair
  - a) the continuing compliance of the investment intermediary concerned with all applicable legislative requirements or regulatory requirements;
  - b) its financial performance; or
  - c) the soundness or continuity of its investment business services and/or investment advice."

Principle 31 - Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.

IMF Assessment:  
Broadly Implemented

2013 Assessment Recommended Action:

The Central Bank should introduce a general requirement that all firms conduct an annual review of risk management and controls. This review should be required to be performed to objective standards and by a function or entity that is independent of the business of the firm.

*Central Bank Oversight*

For all supervisory engagements with firms (whether as a result of full risk assessments under PRISM or reactive engagements due to alerts, complaints whistle-blowers etc.), where the supervision teams identify deficiencies in relation to risk management and control environments remedial action will be taken. This action may include issuing Risk Mitigation Programmes requiring internal audits or skilled person reviews to be undertaken.

*External Auditor Oversight*

Under ISA 315 and ISA 265 the external auditors of investment firms have a responsibility to obtain an understanding of the internal controls which are relevant to the completion of the audit. This involves evaluating the design of controls and determining whether they are implemented. Where significant deficiencies are identified, they must be communicated to management.

*Introduction of IM and CA Regulations*

Where an entity is subject to the IM Regulations or CA Regulations an IM Examination or Client

Asset Examination, as appropriate, must be carried out by the statutory auditor or another external auditor and provided to the Central Bank on an annual basis. The IM Examination / Client Asset Examination is required to report on whether:

- (a) the relevant entity has maintained processes and systems adequate to meet the requirements of the Regulations throughout the period of the examination;
- (b) the relevant entity was compliant with the Regulations as at the period end date;
- (c) any matter has come to the attention of the auditor to suggest that the relevant entity has acted in a manner which is not consistent with that documented within the IM management plan / client asset management plan which has been in operation throughout the period to which the examination relates; and
- (d) changes made to the IM management plan / client asset management plan since the date of the last report have been drafted in sufficient detail to meet the requirements of these Regulations capturing the risk faced by the entity in holding IM given the nature and complexity of the business of the entity under examination up to the date of the current report.

Principle 32 - There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	IMF Assessment: Broadly Implemented
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2013 Assessment Recommended Action:

The Central Bank should be given the authority to appoint an administrator or monitor to step in and run a firm that is in crisis.

The S.I. No. 407 of 2015 - Investor Compensation Act 1998 (Return of Investor Funds or Other Client Property) Regulations 2015 introduced rules, to facilitate the speedier distribution of client assets in circumstances where a shortfall in client assets arises following the failure of an investment firm. These regulations are based on the approach being adopted in other common law jurisdictions where there is case law on tracing remedies.

The European Union (Bank Recovery and Resolution) Regulation 2015 (BRRD) introduces recovery and resolution powers for 13 of the 96 MiFID authorized investment firms supervised by the Central Bank (representing 2 percent of the MiFID population by AUM, 84 percent of the population by holdings of client assets and 85 percent of the population by clients). A MiFID investment firm falls into the scope of the BRRD if it has an initial capital requirement of €730k, (i.e. the firm's authorization includes the investment service of dealing on own account and/or underwriting on a firm commitment basis).

Currently, only 7 of the 32 firms that hold client assets fall within the scope of the BRRD. For those firms that fall outside of the BRRD, the Central Bank has written to the Department of Finance seeking the application of the recovery powers (specifically Art 27–30 of BRRD) within the MiFID II transposition process. One of the primary goals in seeking this extension is to harmonize the options available to supervisors in response to a failing or likely to fail situation.

A summary of the firm coverage (as of December 2015) is provided in the following table:

	BRR Firms	Total Firms	BRR/Total (percent)
AUM (€000's)	7,738,392	377,964,219	2
CA (€000's)	23,566,627	29,352,698	80
Clients	112,839	132,358	85

Further consideration of the Central Bank's letter will have regard for the as yet untested powers in Central Bank (Supervision and Enforcement) Act 2013 and new powers in MiFID II (including Art 69) which are due to be transposed into Irish Law before the commencement of the directive.

Principle 33 - The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.	2013 Assessment: Fully Implemented
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2013 Assessment Recommended Action:

As part of the review conducted by the Central Bank before a new trading venue is authorized it would be prudent to conduct an on-site inspection either immediately before the venue is given authorization or very shortly thereafter.

Following an internal review to improve authorization procedures under MiFID, a new application process was implemented with effect from 8 January, 2014. Under the Central Bank's new MiFID authorization procedures, all applicants are graded as Level 1 (less complex) or Level 2 (complex). All Level 2 applications are also project-managed by the Authorizations Team Manager, drawing on the resources of key connected departments such as:

- Consumer Protection;
- Supervision;
- Client Assets;
- Risk;
- Market Infrastructure;
- Transaction Reporting;
- Information Technology; and
- Senior Management.

All applications from proposed MTFs or Regulated Markets will be classed as Level 2 applicants. These applications will therefore involve a number of site visits with the proposed applicant and include a review of the trading software.

Once the authorization process is completed, the relevant supervision team will schedule a series of supervisory engagements/visits/inspections on an on-going basis. The newly authorized entity will be subject to a more intense scrutiny of its activity (including regulatory reporting) in the first few months of operation.

*MiFID II/MIFIR:*

MIFID II/MIFIR will introduce a new type of trading venue, OTFs, to capture multilateral trading in non-equity instruments that does not currently take place on Regulated Markets or MTFs.

Organizational requirements for MTFs will be aligned with those of Regulated Markets in order to create a more level playing field. The legislation also introduces new trading rules for equity and derivative instruments, new pre- and post-trade transparency obligations for equity-like and non-equity instruments, and a regulatory framework for consolidated trade data to be made available. Investment firms that deal on own account by executing client orders outside a trading venue—known as systematic internalizers—will be subject to enhanced firm quote obligations.	
Principle 34 – There should be on-going regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.	2013 Assessment: Fully Implemented
<i>MiFID II / MiFIR:</i>	
MiFID II/MiFIR was meant to apply from 3 January, 2017 but it is expected that implementation will be delayed by 12 months. Draft regulatory technical standards are currently being prepared at European level. The transaction reporting regime will be standardized throughout the EU with uniform requirements applying. The scope of transaction reporting will increase to include additional financial instruments, further data on transactions, and be extended to more trading venues and firms. The Central Bank has initiated a project to update relevant systems. (See discussion under Principle 33 regarding organizational requirements for MTFs under MiFID II/MiFIR.)	
Principle 36 - Regulation should be designed to detect and deter manipulation and other unfair trading practices.	2013 Assessment: Partly Implemented
<i>2013 Assessment Recommended Action:</i>	
The Companies Law should be amended or other legislation introduced to prohibit the full scope of activities that are abusive to the market regardless of where that trading takes place or whether the securities are admitted to trading on a Regulated Market.	
Other changes to regulatory framework/supervisory framework.	
<i>MAD II/MAR:</i>	
MAR and MAD II will strengthen the Bank's capacity to detect and deter market abuse, including market manipulation, by extending the scope of the legislation beyond EU regulated markets to include all trading platforms and financial instruments which can impact on them. Deterrence will also be strengthened by including attempted market manipulation as an offence along with attempted insider dealing. Further deterrence will be achieved by including inciting and aiding and abetting market abuse as offences under the new legislation.	
Principle 37 - Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	2013 Assessment: Partly Implemented
<i>2013 Assessment Recommended Action:</i>	
The Central Bank should carry out reasonable due diligence on the regimes where the principal clearing and settlement of trades by Irish intermediaries or in Irish securities take place, both on the regulatory oversight conducted and the effects of bankruptcy/ insolvency regimes on positions (client or intermediary) held in that jurisdiction. Obtaining opinions from legal counsel	

on the treatment of assets and positions on insolvency, particularly in Belgium, the UK and Germany, would also be prudent.

As indicated by the Central Bank in 2014 in response to the IMF's Detailed Assessment Review, the Central Bank believes that the ESFS provides an appropriate framework for meeting the aims of this principle.

Specifically, the Central Bank is satisfied that the regulatory regimes in Belgium/UK and Germany are analogous to that in Ireland (all have implemented the various EU markets legislation as have Ireland). The responsibility to both inform clients and assess the bankruptcy/insolvency regimes maybe different in other jurisdictions lies with the regulated entities, as opposed to the Central Bank. The Central Bank is not directly responsible for the return of assets following an insolvency.

*2013 Assessment Recommended Action:*

The MOU with the UK authorities regarding oversight of CREST should be updated and one should be put in place with BaFin regarding the oversight of Eurex Clearing to ensure an effective gateway for clearing related information.

There is an annual review meeting held with the Bank of England at which the MOU is reviewed. At this year's meeting it was agreed that the content of the MOU would be looked at when the 'regulatory technical standards' relating to the EU Commission's CSD Regulation (Regulation 909/2014) have been finalized.

Also, there is a written agreement between the Central Bank and the German supervisor (BaFin) regarding the running of the supervisory College of EUREX Clearing AG (EUREX CCP). Under this agreement, the Central Bank can receive certain information from the BaFin, the scope of which is partially defined by reference to level-two legislation. Thus, where BaFin intends to review the arrangements, strategies, processes and mechanisms implemented by Eurex Clearing AG to comply with EMIR or to evaluate the risks to which EUREX Clearing AG is, or might be, exposed, it shall consult and be informed by views of College Members. Where BaFin performs a review or evaluation of Eurex Clearing AG under Article 21 of EMIR, it provides detailed results of the findings of the review or evaluation to College Members who are entitled to raise any points of interest or concern. This arrangement is also covered under Commission Delegated Regulation (EU) No 879/2013, Article 5, 'Exchange of information among authorises'.