ICQ

IRISH COMPLIANCE QUARTERLY

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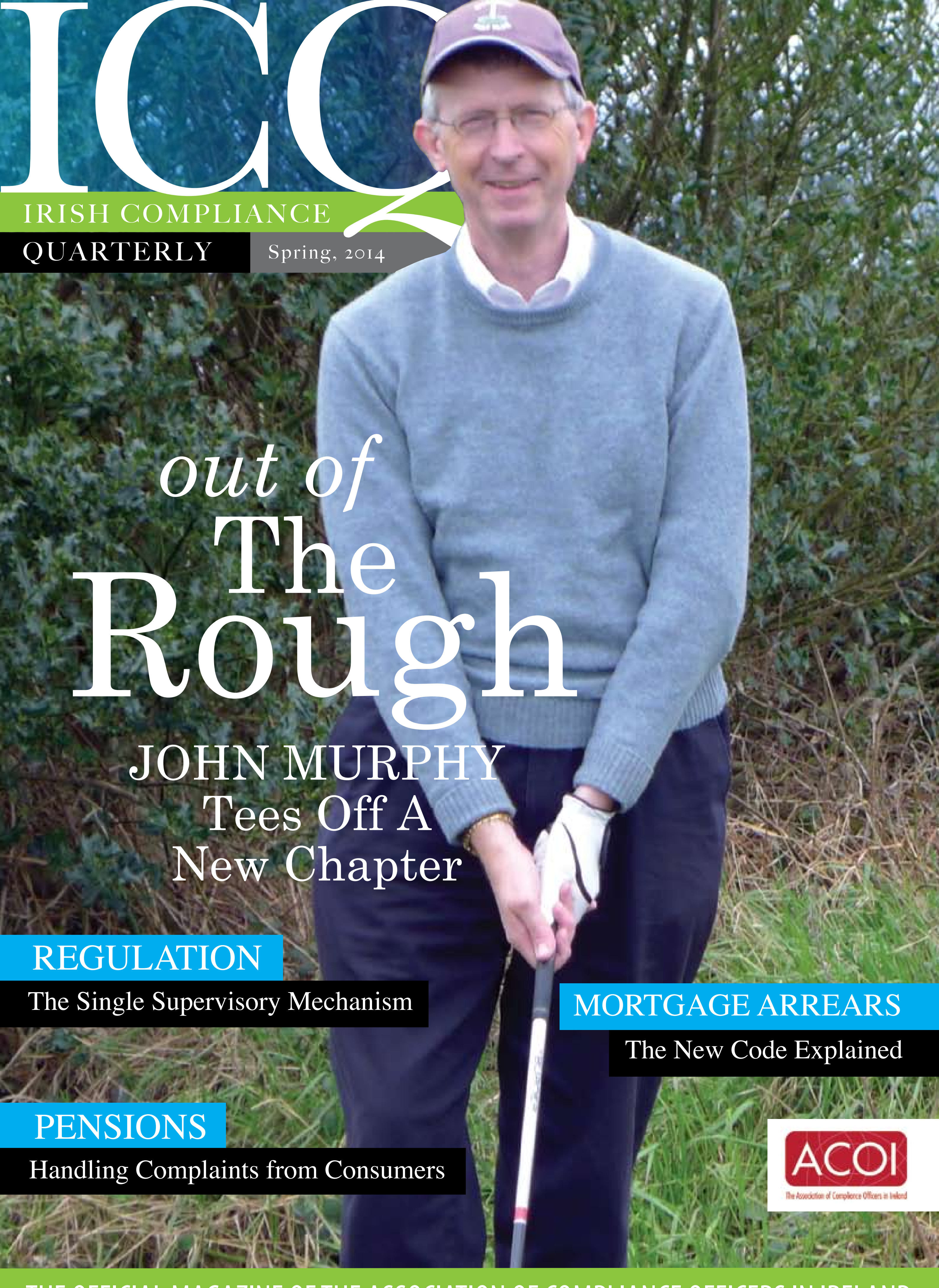

# out of The Rough

## JOHN MURPHY Tees Off A New Chapter

**REGULATION**

The Single Supervisory Mechanism

**MORTGAGE ARREARS**

The New Code Explained

**PENSIONS**

Handling Complaints from Consumers

ACOI The Association of Compliance Officers in Ireland


THE OFFICIAL MAGAZINE OF THE ASSOCIATION OF COMPLIANCE OFFICERS IN IRELAND

# Contents



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For more information on the ACOI visit **www.acoi.ie**
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# Irish Compliance Quarterly

**WELCOME TO THE FIRST EDITION** of Irish Compliance Quarterly (ICQ), the electronic publication of the Association of Compliance Officers in Ireland, the only professional body for compliance professionals in Irish financial services.

ICQ will be published four times a year and aims to engage with you – the ACOI's membership base – by analysing and debating a wide range of compliance-related topics. These will range from regulatory updates to detailed analysis of the content and application of particular areas of relevant regulation and legislation. We will also cover various ACOI-specific educational, training and social initiatives.

The ACOI provides an important source of professional competency development as well as a valuable networking forum for its members. We aim to use ICQ to complement our existing services in these areas and to keep you up to speed with all the relevant industry developments. The content of ICQ will reflect this over the coming issues.

As the ACOI is a membership organisation for compliance professionals, the promotion of high ethical standards among members is important to the Association. This will also be reflected within the publication as we continue to equip you with the relevant tools, knowledge and support to undertake your role in a professional manner.

I hope you enjoy this first issueand I would be delighted to receive any feedback you may have about the publication.

**Philip Brennan**
Chairman,
ACOI
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**THE LAUNCH OF ICQ** marks another important milestone in the ongoing development of the Association of Compliance Officers in Ireland. Published every quarter, ICQ is unique as it is being distributed digitally to ACOI members and being HTML5-enabled, it can be accessed on any smartphone and tablet device while a PDF version is also available on the ACOI website, www.acoi.ie

The first issue of ICQ looks at a number of issues that we hope you find interesting and informative. Our Cover Story features an interview with John Murphy, the former head of compliance with Bank of Ireland who talks about his illustrious career in banking and compliance. With the Single Supervisory Mechanism (SSM) becoming fully operational later this year, we also examine how it will operate and what supervisory powers it will have. In addition, ICQ examines the EMIR Regulations with a useful summary of the main regulations. We also look at the Revised Code on dealing with Mortgage Arrears and how to deal with pension complaints.

I would like to thank all of the contributors, who shared their time, expertise and valuable insights with us, in this first edition of ICQ and would take this opportunity to invite members to submit their suggestions for future editions. In particular, the ACOI Publications Committee would be delighted to hear from members interested in submitting content, so please email your suggestions or content to publications@acoi.ie.

We hope you enjoy this first issue of ICQ and we look forward to developing it further into the future with your support.

Best wishes
**Valerie Bowens**
Chairperson,
ACOI Publications Committee

# The Compliance Challenge

**The role of compliance officers, the resources they have at their disposal and the challenges they face forms a key part of a new survey undertaken by Deloitte and the ACOI, which was published in February.**


With the financial services industry emerging from a very difficult period in its recent history, the importance of the compliance function has never been greater, yet the survey points to the need for greater urgency when it comes to increased resources and the boards of companies need to acknowledge the importance of compliance and ensure greater resources are put in place.

One of the biggest challenges identified by the survey's respondents is the management of upstream compliance with 40% identifying it as the single most pressing issue. It was followed by remediation projects (17%), stakeholder management (15%) and costs/budgets (15%).

When asked about compliance function roles and responsibilities, the survey noted that the activities performed by a compliance function remained consistent with those identified in the last survey conducted by Deloitte and the ACOI in 2009. These included reporting to the board (98%) and monitoring compliance (98%). However there was an increase in focus on other key areas like the development of policies (87%), developing procedures (87%), implementing new regulations (92%) and managing the relationship with the Financial Regulator (94%).

The areas where the focus of compliance officers has decreased are marginal according to the survey – 10% in all cases – and include areas like new product approval, advertising approval and managing the relationship with the Financial Services Ombudsman.

The survey also found that some of the top priorities for compliance functions in 2014 include enhancing and embedding compliance policies and procedures (16%), enhancing monitoring and assurance capabilities (15%) and developing a compliance risk assessment process (15%).

The effects of the Central Bank's PRISM framework for the supervision of regulated firms also formed part of the survey. Since it was introduced, some 52% of those surveyed said they had received a visit from the Central Bank in the period 2012-2013 with the highest proportion of respondents operating in the banking sector, followed by the insurance sector.

In terms of resources, the Deloitte/ACOI survey noted that there was an average increase in compliance resources of 31% in the respondents' firms between 2009 and 2013 while 58% said there was no change during the same period. However 11% of respondents said that resources had decreased while 6% said they may decrease again in 2014.

Responding to the survey's findings, Philip Brennan, Chairman of the ACOI says; "the survey tells us that the demands on compliance officers has never been so high. This is due to the plethora of new regulation in the wake of the financial crisis, the increased focus on compliance by board members, having a regulator with considerably increased resources and powers and the ongoing risk of enforcement action for procedural as well as compliance breaches."

"The level of resources in compliance functions in Ireland has, at best, remained static over the last five years. The Deloitte survey states that while the world of regulation has changed and continues to change, the modus operandi of Compliance functions has not, in many cases, changed sufficiently in response. This is a real worry and is not sustainable," he said.

"I am conscious that, in the wake of the financial crisis, all financial institutions are trying to rebuild profitability and balance sheets. I am also conscious that some larger institutions are attempting to re-divide responsibility between the first and second lines of defence. And I know that there is a strange irony in the fact that, at a time of most need for investment in compliance resources, many institutions can least afford to do so. But the survey findings warrant serious consideration," he adds.

"Responsibility for consideration and, as necessary, addressing many of the issues identified rests not just with Compliance Officers, but with senior management and ultimately with boards. Boards and senior management face significant challenges in meeting the business and regulatory challenges of the future. Compliance Officers can play a key role in helping them to do so. But this requires investment in competent qualified resources and leading risk management techniques. Boards, in particular, must ensure that the responsibility to act compliantly rests primarily with management in the first line of defence. They must then ensure that there is an adequate number of competent and qualified Compliance staff to help management embed a compliance culture and to give them independent assurance that the firm is meeting its compliance responsibilities. And they must ensure that sufficient investment is made in technology aids to measure compliance effectively and efficiently," he concludes.

**A copy of the Compliance Survey 2014: The Changing Role of Compliance Officers will be available on the website of the ACOI at www.acoi.ie.** ICQ

# ACOI Annual Dinner

The ACOI's annual dinner will take place on May 16th 2014 in the Guinness Storehouse. The highlight of the ACOI's annual social calendar, the annual dinner is a must-attend event for members and this year comedian Neil Delamere will provide the entertainment.

Neil Delamere is one of the top acts working in the Irish comedy scene today and is best known to audiences for his regular appearances on RTÉ's The Panel and BBC's The Blame Game.

He has performed all over the world at many of the international comedy festivals including the Kilkenny Cat Laughs festival, the Montreal Just for Laughs Festival, the Melbourne International Comedy Festival and the New Zealand Comedy Festival.

The black-tie dinner will start at 7 pm and tickets for the event are €85 per person or €850 for a table of 10 guests. Booking for the annual dinner will close on Friday May 9th and tickets may be purchased through the ACOI and via www.acoi.ie. ICQ

# Dates for Your Diary

With the annual educational calendar for the ACOI now in full swing, a number of important registration dates for the different courses have been finalised.

Registration for the PDC exams in September 2014 closes on **July 4th**.

Applications and expressions of interest for the two Masters courses offered by the ACOI are open all year round, but closing dates for applications for the MSc in Compliance is **August 1st 2014** while the deadline for the MA in Ethics (Corporate Responsibility) will be the **end of April**, although this will be extended on a month-by-month basis up until the start of term.

**For more information on the ACOI's suite of educational offerings, see Page 17.**

# OUT of the Rough

**John Murphy's circuitous route to becoming head of compliance with Bank of Ireland saw him serve stints in branches on O'Connell Street and Phibsboro in Dublin, to computer programming, financial control and then on to New Hampshire in the US and finally back to Dublin again. In between, he completed his B. Comm. in UCD and also qualified as an accountant.**

In an illustrious career that culminated in retirement in September 2013, he has enjoyed a bird's eye view of how compliance has developed in Ireland over the last 20 years and where it will head over the next 20 years.

"I started my banking career in the Bank of Ireland branch in O'Connell Street, of all places, back in the 1970s. Then I went to Phibsboro and that was the full extent of my branch experience. Then I became a computer programmer for four years, and I did my degree at night in UCD. I then joined the financial control department where I qualified as an accountant," he says.

*"As the bank continued to grow in size and the scale of its offerings grew, it was clear that the compliance function was more and more important and indeed necessary."*

The opportunity to move overseas then beckoned. At the time, Bank of Ireland had been busy expanding its geographical footprint and John moved to New Hampshire on the east coast of the US. The bank had just made its first acquisition in the US by acquiring First New Hampshire Bank in 1988 for US$370m. Then, over the next few years, it acquired other regional lenders including Amoskeag BankShares and Bank East Corporation, making it the largest banking group in the state of New Hampshire.

"It was a totally different ethos to what I was used to, particularly the way people worked, but it's like anything else and you just manage to get on with it. You turn up one day, find somewhere to live, find a car and all that sort of thing and get stuck in. But the bank did help you out quite a lot and it wasn't too bad. Even though I was only meant to be there for 18 months, I ended up staying seven years," he says.

In terms of how the banking industry was run in the USA at the time, he says that there was not a huge amount of difference between it and Ireland.

"Funnily enough banking was exactly the same. The thing that surprised me was, they started at 8 o'clock in the morning, which wasn't the norm in Dublin. That was 9 o'clock. But in terms of banking, you pretty much had the same concepts. They may have had different phraseology but it more or less meant the same thing. I was in the finance department at the time, I became an expert on US GAPP accounting at the time. I remember when the bank was starting to make its first filings with the Securities and Exchange Commission. I had an involvement in that because Irish GAPP accounting and US GAPP accounting standards were very different, and I had a good knowledge of US GAAP. And then eventually the bank sold out to RBS and that's what brought me back to Ireland," he says.

When it came to how the industry was supervised compared to back home, however, there were considerable differences.

"Well I always found America had stricter standards. You never get regulated by just one regulator in the US, there always seems to be more than one. But they were also a lot more robust and they inspected every little detail every year, whereas in Ireland or the UK, you might have a full inspection every two to three years. So they are more active in their inspection routines and I think inevitably Europe will end up going the same way, particularly with the new European Banking Authority being established," he says.

One of the big compliance issues in US banking, says John, is money laundering.

"They are really big on money laundering and you can see the fines in the US. So money laundering takes up a huge part of their compliance. But secondly they would have had far more banking crises than Europe would have had, so they are strict – very strict – on loan portfolios and loan quality. And that's driven by the fact that a small number of banks go bust there every year, so they have had more issues to deal with than European countries."

*John Murphy.*

John's US sojourn ended in 1996, however, when the bank merged its US operations with Citizens, which was a wholly owned subsidiary of the Royal Bank of Scotland to create what was then the third largest bank holding company headquartered in New England. As part of the deal, Bank of Ireland's stake was reduced to 23.5%, a stake it held on to until September 1998 when it was sold to the Royal Bank of Scotland for US$763 million in cash. "That's what brought me back to Ireland," he says.

His next stop-off within the wider Bank of Ireland group was at Lifetime, the bancassurance arm of the bank, and later New Ireland Assurance where he took up the role of financial controller from 1996 until 2004.

"So in 2004, I had been in the life business for eight years, and overall I had been in finance for about 23 years so when the opportunity came along to move for a new position of Head of Group Compliance with the bank, I applied for it and got the job. The bank never had a head of group compliance before that although it did have a small central compliance department. As the bank continued to grow in size, and the scale of its offerings grew, it was clear that the compliance function was more and more important and indeed necessary.

"It had come out of a review of the bank's compliance arrangements and the need to create a central compliance department and a need to generally improve the standards of compliance in the bank. Bank of Ireland was no different to any other bank and all of them were doing exactly the same thing. The compliance agenda was becoming more prominent and when I spoke to other banks in Ireland or in the UK, they were all in the same position. They were all growing their resources because of the emphasis on compliance; they needed to be able to prove that they were actually obeying the laws of land and obeying the codes of practice," says Murphy.

"Ironically in my first month in the job, there was the AIB foreign exchange controversy, where customers were being overcharged. And of course when that happens, you have to go around checking all your own systems and controls. But it was actually a useful wake-up call for everybody to go out and check all their controls. Also when you do go out and check, inevitably you find areas for improvement and things that you want to do," he adds.

Over the next few years, the importance of compliance became more prominent and the workload for compliance departments intensified, largely as a result of increased supervision and a raft of new consumer-related codes emanating from the Central Bank and the EU.

"Things like the Consumer Protection Code and the Central Bank's whole agenda when it came to consumers were important. Now, if you are in compliance, you are probably spending more time on consumer issues than anything else, certainly in a retail bank. So the whole consumer agenda was being driven by the Central Bank with all its codes of practice. And inevitably when you have your codes of practice, if you are in compliance, you need to be advising the business on how it has to comply with the codes. Then you need to constantly monitor your programme by checking that they are complying with it. Because that's just as important to a regulator as anything else. Then, of course, we also had new money laundering laws. So between consumer protection, money laundering and mortgage codes, the work load for compliance just increased dramatically," he says.

*"No financial institution wants to be on the receiving end of an enforcement action but inevitably there are a few of them every year."*

As fate would have it, the year John started in his new compliance role with Bank of Ireland, the ACOI launched its first PDC exams which he signed up for.

"I did manage to pass all four, but I wasn't necessarily a gold medal student. But I was happy. Coming from a non-compliance background, I found the studies incredibly useful in terms of upping my knowledge in a very quick time scale. I did the exams in about a year and a half. I also found them very useful for bringing my technical knowledge up to speed, which was very helpful in my day job."

*"You never get regulated by just one regulator in the US, there always seems to be more than one."*

Given the important role compliance now plays in the financial service industry, is there a strong case to be made for some sort of compliance training or induction course for all personnel working in the industry?

"Well the Association has been saying to the Central Bank that we believe the compliance officer should be formally qualified. Now we have not yet managed to persuade them that this is the case but there is a certainly a case that senior management in all the organisations should have a good knowledge of the rules and regulations. And while some of them may not want to do exams, perhaps it should be part of their ongoing training every year to ensure that they are aware of all the rules and regulations. In addition, the induction for new directors should include summaries of the key laws and regulations that the organisation of which they are now directors has to obey. And they should be looking to a compliance officer to give them assurance on a regular basis," he adds.

"What was interesting about the recent Deloitte survey was that some compliance officers only reported to their boards once a year. I used to report certainly to a risk committee on an ongoing basis and there was a really detailed report a couple of times a year. Certainly the ACOI is in favour of much more reporting of compliance matters to boards."

Arguably one of the big changes John has seen down through the years is the threat of enforcement action.

"It has gone from nowhere to being pretty stiff. And no financial institution wants to be on the receiving end of an enforcement action but inevitably there are a few of them every year. But that wouldn't have been there, in 2004 for instance, when I started. The Central Bank enforcement division is very active these days and that keeps compliance people on their toes."

The other big influence that John singles out as one of the major developments during his career is the EU and its role in setting the legislative agenda in member countries throughout Europe.

"First of all, all the major laws come out of the EU and a lot of EU directives get transposed into Irish law and that's what drives a lot of the agenda now in Ireland. So the EU probably has the biggest influence on Irish financial services regulation, because they all derive from EU law. So something like data protection is driven by EU directives. The EU has also had a huge impact on the compliance officer workload and you would expect a compliance officer to be familiar with the directives that are in the pipeline in Europe and looking forward to what's coming down the tracks at them. And there is probably more coming out of Europe than would come out of the Irish parliament. Because it's Europe that is issuing the directives, that's where we need to be looking. Indeed, the representative bodies like the IBF and the Insurance Institute do try to influence these directives because that's where the action is, so to speak, in terms of new legislation. And Europe's influence and role is only going to increase over time as we've seen with the proposed banking directives coming down the line," he says.

Having spent all his working life in the financial services industry, he has also witnessed some difficult times for the financial sector, particularly over the past few years.

"Well if you look at the crisis, it was really a credit and liquidity crisis more than anything else. Banks everywhere, not just in Ireland, were lending to people who couldn't repay them. Unfortunately there's not a lot a compliance officer can do about that as they don't tend to be in the lending positions themselves. I don't think a compliance department can stop a crisis of the sort we have had. The role of a compliance officer in my view, is to make sure that the company has the right policies and procedures, that they are following these policies and procedures, that they are advising the business correctly and that they are reporting to their boards on the true state of compliance in the firm. And obviously highlighting areas that need to be addressed. If the board chooses to ignore this advice, then that's a different matter. Now the Central Bank has the power to disbar you from working in the financial services sector if you knowingly broke the law. If a compliance officer does that properly and brings it to the attention of management and they take action, I don't think the Central Bank can complain. We don't live in a perfect world, things go wrong for all sorts of reasons. In actual fact, most of them are not intentional at all, despite the spin the press may put on it."

***"Banks everywhere, not just in Ireland, were lending to people who couldn't repay them. Unfortunately there's not a lot a compliance officer can do about that as they don't tend to be in the lending positions themselves."***

Although now retired from Bank of Ireland, John Murphy is not one for slipping off quietly and he maintains a busy schedule working with the ACOI several days a week. In between that, he is working on his golf handicap.

"The poor state of my golf game has got nothing to do with my work schedule because it hasn't improved at all in the three months since I retired from Bank of Ireland. But I hope it will get better," he concludes. ICQ

# EMIR – A Summary of the Main Obligations


**The EMIR Regulation is the EU's response to fulfilling the G20 commitment in 2009 that all standardised OTC derivatives should be cleared through central counterparties (CCPs) by the end of 2012 and that OTC derivatives contracts should be reported to trade repositories.**

The European Market Infrastructure Regulation (Regulation No. 648/2012), known as "EMIR" is a new EU Regulation on OTC Derivatives which entered into force on August 16 2012. The actual implications of EMIR and the implementation timeline has remained uncertain for a while, pending the publication of the relevant Regulatory and Implementing Technical Standards (RTS and ITS) most of which were published by the European Securities and Market Authority (ESMA) on the 15 March 2013.

EMIR imposes three main set of obligations on market participants who enter into derivative transactions:

(i) reporting obligations;
(ii) clearing obligations; and
(iii) risk mitigation techniques obligations.

Not all EMIR obligations are in place at the time of writing. The nature and the extent of the EMIR obligations on market participants depends on their categorisation under EMIR.

In particular, EMIR applies to:

- Financial Counterparties "FC", namely investment firms, credit institutions, insurance/assurance/reinsurance undertakings, UCITS funds and their management companies, institutions for occupational retirement provisions, alternative investment funds and alternative investment funds managers; and
- Non Financial Counterparties "NFC" – any other undertaking established in EU which is not a FC.

For the purpose of EMIR, NFC are further classified as NFC+ or NFC- depending on whether their positions, in respect of relevant OTC derivatives, exceed or fall below specific clearing thresholds set out by the EMIR Regulation (Art. 11 of the Commission Delegated Regulation (EU) No. 149/2013).

UCITS, authorised in accordance with the UCITS Directive (Directive 2009/65/EC) and alternative investment funds within the scope of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU), are in the scope of EMIR and all the provisions set out with respect to FC are applicable to them.

## REPORTING OBLIGATIONS

The reporting obligations applies to all FC and NFC+/-. Effective from 12 February 2014, any derivative contract (OTC or exchange traded), concluded, modified or early terminated must be reported to an EU Trade Repository (TR) registered with, or a Non EU-TR recognised by ESMA. The list of registered TRs is available on the ESMA website at www.esma.europa.eu/page/Registered-Trade-Repositories. The deadline for reporting is the working day following the conclusion, modification or termination of the contact. EMIR Reporting extends to existing derivative contracts outstanding on 16 August 2012 (the "Implementation Date").


Therefore, if a contract outstanding on the Implementation Date is still outstanding on 12 February 2014 (the "Reporting Date") the deadline for reporting is 13 May 2014; if a contract outstanding on the Implementation Date is no longer outstanding on the Reporting Date, the deadline for reporting is 12 February 2017.

In order to comply with the reporting obligations FC/NFC are required to have a Legal Entity Identifier (LEI). Irish FC/NFC will obtain a pre-LEI by submitting a request to the Irish Stock Exchange, the sponsored pre-LEI service provider in Ireland. UCITS and AIF should obtain an LEI for each sub-fund of the UCITS or AIF.

The content of the report which includes information on the derivative contract (Common Data) and information on the counterpart of the transaction (Counterparty data) is defined in Commission Delegated Regulation (EU) No. 148/2013. Transactions within the same legal entity and contracts terminated in accordance with the original date/terms of the contract (i.e. maturity) are not reportable transactions.

In order to ensure that the information disclosure under the reporting obligations is consistent with contractual, statutory, regulatory or other legal limitations (clauses of non-disclosure, confidentiality etc) engaged with the counterparty, FC/NFC shall adhere to the EMIR ISDA Reporting Protocol which among others contains a counterparty's consent to the disclosure of information in the term therein described.

FC and NFC+/- may report directly to their TR or, by prior arrangement, may delegate their reporting obligations to the respective counterparty or to an agent/third party. Ultimate responsibility for any deficiencies or failure of the EMIR reporting remains with the original delegating FC/NFC+/-. The latter are therefore required to ensure appropriate monitoring of the information reported on their behalf to the relevant TR in case of delegation.

## CLEARING OBLIGATIONS

FC and NFC+ are required to clear all OTC derivatives of a class which has been declared subject to clearing obligations. The list of mandatory clearing derivatives has not been finalised yet and when available will be published on a public Register, maintained and kept up to date by ESMA.

ESMA will take into consideration the following criteria to determine the classes of OTC derivatives subject to clearing obligations:

- the degree of standardisation of the contractual terms and operational process of the relevant class of derivatives;
- the volume and the liquidity of the relevant class of OTC derivatives; and
- the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.

The class of derivatives, subject to clearing obligations, must be cleared through a Central Counterparty (CCP) that has been authorised to clear the relevant class of derivatives. EMIR sets out the process by which CCPs established in EU will be authorised and those established in a third country will be recognised.

The mandatory clearing obligation will apply to OTC derivative contracts entered into or novated (i) on or after the date from which the clearing obligation take effect; or (ii) on or after the date a competent authority notifies ESMA that it has authorised a CCP to clear a class of OTC derivatives

***"All OTC derivatives contracts, not falling under the central clearing obligations, will continue to be cleared bilaterally."***

but before the date referred to in (i) if such contracts have a remaining maturity to be determined by the EU Commission.

Intragroup transactions, where notification has been given to the relevant competent authority in accordance with the provisions of EMIR are not subject to clearing obligations. The Central Bank of Ireland (CBI) has informed that it will be accepting a notification and submission only after it has been formally appointed as a Competent Authority and after they become admissible under EMIR, which means after CCPs have been authorised to clear specific class of derivatives. The CBI is not appointed NCA in Ireland. The appointment is due to be made by the Minister of Finance in a Statutory Instrument.

### RISK MITIGATION TECHNIQUES OBLIGATIONS

All OTC derivatives contracts, not falling under the central clearing obligations, will continue to be cleared bilaterally. However, EMIR imposes strict conditions on the risk management procedures applicable to these transactions. Risk mitigation techniques include: a) timely confirmation; b) portfolio reconciliation; c) portfolio compression; d) dispute resolution; e) daily valuation; f) exchange of collateral and adequate capital to cover the exposures arising from OTC derivatives not cleared by a CCP. All these obligations with the exception of the exchange of collateral (f) are already in place and, more specifically, they refer to what follows:

**a) Timely Confirmation:** the rule states that any OTC derivative contract, not cleared by a CCP, should be confirmed, where available via electronic means, as soon as possible and within a specific timeframe which changes depending on the type of derivative concerned (CDS, IRS) and depending on the EMIR status of the counterpart involved in the transaction (FC/NFC). The timely confirmation obligations do not apply to terminations provided that the termination removes all residual obligations in respect of that transaction.

The number of unconfirmed OTC derivative transactions that have been outstanding for more than five business days must be reported to the National Competent Authority (NCA). In relation to this point and following the adoption of the relevant RTS and ITS on the15 of March 2013, the CBI clarified that "Financial Counterparties (FC) do not need at this point to submit the monthly report as requested under EMIR (Art 12.4 of the EC Regulation Nr 149/2013) regarding unconfirmed OTC derivatives, (unless specifically requested). However it is expected that all impacted financial counterparties will, from 15 March

2013, have the necessary procedures in place to report to the Central Bank when requested to do so".

**b) Portfolio Reconciliation:** the aim of this obligation is to ensure that the counterparties to an OTC contract have recorded the same terms of the trade. Portfolio reconciliation is performed by the counterparties to the OTC derivative contracts with each other or by a qualified third party duly mandated to this effect by the counterparty. The frequency of the portfolio reconciliation depends on how many OTC derivative contracts are outstanding between counterparties and on the type of counterpart involved in the transaction (FC/NFC).

**c) Portfolio Compression:** the obligation to perform a portfolio compression applies to FC and NFC+ with more than 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared. These parties shall have in place procedures to regularly and at least twice a year analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. FC and NFC+ shall ensure that they are able to provide a reasonable and valid explanation to the relevant NCA for concluding that a portfolio compression exercise is not appropriate.

**d) Daily valuation (marking to market and marking to model):** outstanding non-centrally cleared OTC derivative contracts are required to be valued on a daily basis on a mark to market basis or where market conditions determined otherwise, a "reliable and prudent marking to model" may be used.

**e) Dispute resolution:** FC and NFC must agree detailed processes and procedures for:

a) the identification, recording and monitoring of disputes related to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedure shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is dispute; and

b) the resolution of dispute in a timely manner with a specific process for those disputes that are not resolved within five business days. In particular, it is required to notify the relevant competent authority where a dispute lasts longer than 15 business days and when it is for an amount or value higher then €15million.

**f)** Exchange of collateral and adequate capital to cover exposures arising from OTC derivatives not cleared by a CCP:

EMIR requires that FC/NFC put in place procedures for the timely, accurate and appropriate segregated exchange of collateral for non-centrally cleared OTC derivatives that are entered into on or after 16 August 2012. FC are therefore required to hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral. These requirements should be introduced in stage starting from 2015.

In order to properly address all risk mitigation obligations FC/NFC are required to put in place appropriate procedures or arrangements with third parties and to amend the derivative documentation on a bilateral basis or by adhering to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol available on the ISDA website to ensure that the EMIR requirements are reflected in the documentation governing the transaction.

**From the ACOI Funds Working Group.** ICQ

# Handling Pensions' Complaints from Consumers


**When consumers have a complaint about their pensions, there are very clear procedures for them to seek complain and seek redress.**

**WHERE DO I GO IF I HAVE A COMPLAINT IN RELATION TO MY PENSION?**

In the first instance, you must go through the internal complaints procedure of the organisation(s) you are complaining to. Depending on the nature of your complaint, this might be the trustees of the pension scheme, someone else involved in the management of the scheme (such as your employer or the pension scheme administrator) or a third-party financial services provider involved in advising you on your pension.

In the vast majority of cases, neither the Financial Services Ombudsman ('FSO') nor the Pensions Ombudsman ('PO') will investigate a complaint unless it has, in the first instance, been investigated through the relevant internal complaints procedure and a final response has been issued.

Although the type of complaints that must first be handled through the IDR procedure is specified by regulations, the IDR procedure may be used voluntarily to deal with all types of complaints and disputes which arise in relation to a pension scheme. In addition, certain complaints will fall outside of the scope of the IDR.

Those complaints which must go through the IDR procedure include the following:

- those relating to an allegation that an individual has suffered a financial loss because of some failure in the administration of the pension scheme; or
- disputes of fact or law that arise in relation to an act done by, or on behalf of, a person responsible for the management of the scheme.

**TELL ME MORE ABOUT THE INTERNAL COMPLAINTS PROCEDURE.**

For the most part, complaints in relation to pensions go through what is known as an Internal Disputes Resolution ('IDR') procedure. Under pensions legislation, the trustees of every occupational pension scheme, Trust Retirement Annuity Contracts and Personal Retirement Savings Account ('PRSA') providers must operate an IDR procedure.

***"Where your complaint or dispute does not fall within the scope of the IDR, the trustees/PRSA provider must advise you of this and of the fact that they will not be investigating it."***

Where your complaint or dispute does not fall within the scope of the IDR, the trustees/PRSA provider must advise you of this and of the fact that they will not be investigating it.

**HOW DOES IT WORK?**

Where the IDR procedure applies, an application must be made in writing to the "Relevant Person", giving details of your complaint or dispute. In private sector pension schemes, for example, this means the scheme trustees. The relevant person is required to investigate the matter and issue their decision ('Notice of Determination') within three months.

Where the complaint does not fall within the scope of the IDR, It is likely that it will need to be made directly to the relevant financial services provider. All regulated financial service providers are required to have in place a written procedure for the proper handling of complaints.

For example, if you received financial advice from an investment intermediary in relation to a personal pension product and you subsequently had a complaint in relation to that advice, you would be entitled to make a complaint directly to that financial services provider and that provider would be required to handle your complaint in accordance with the relevant requirements set down by the Central Bank of Ireland i.e. the Consumer Protection Code 2012.

**WILL I RECEIVE A WRITTEN RESPONSE TO MY COMPLAINT?**

Yes. Whether the relevant internal complaints procedure is the IDR procedure or the complaints handling procedure of a financial services provider, the 'output' is effectively the same – a 'Notice of Determination' or a 'Final Response', which seeks to resolve the matter either by upholding the complaint, or by outlining the reasons why it has not been upheld. In all cases, this final correspondence must confirm that the complainant may refer the matter to the relevant Ombudsman and must provide the contact details of such Ombudsman.

**WHAT IF I AM NOT HAPPY WITH THE OUTCOME OF THE INTERNAL COMPLAINTS PROCEDURE?**

As indicated above, you are not bound by the findings of any internal complaints handling procedure and you may refer your complaint to the relevant Ombudsman for independent investigation. Again, the 'relevant' Ombudsman – the PO or the FSO – will depend on the nature of your complaint and how it has been investigated internally:

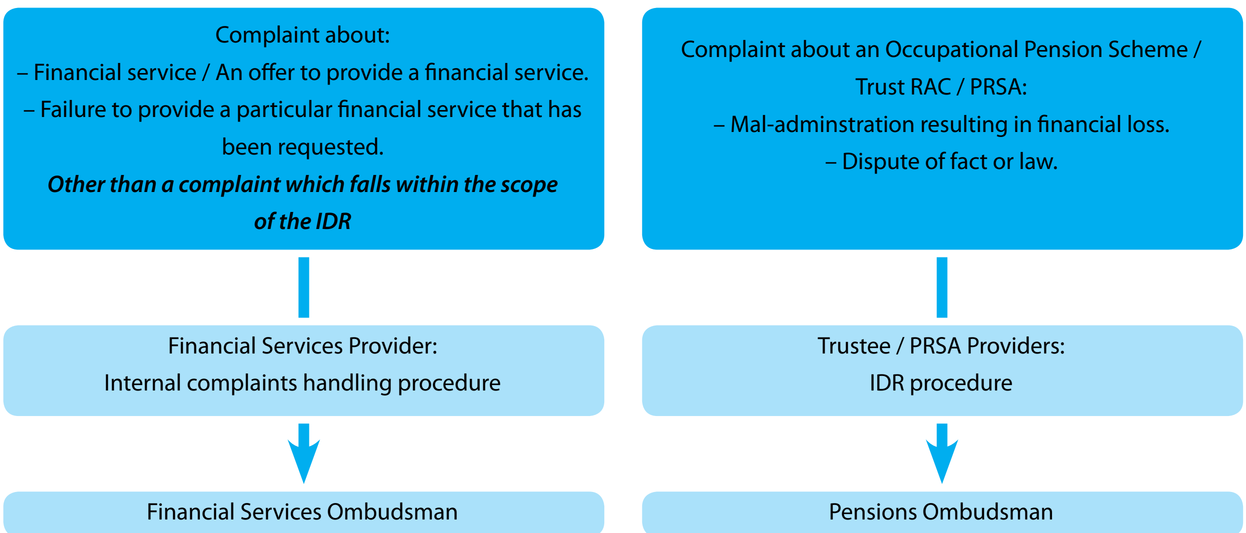
- The role of the PO is to investigate complaints of financial loss due to mal-administration and disputes of fact or law in relation to occupational pension schemes, PRSAs and Trust RACs;

- The FSO is a statutory officer who deals independently with complaints from consumers about their individual dealings with all financial services providers that have not been resolved by the providers. If your complaint does not fall under the terms of the IDR, it might be one that the FSO is willing to investigate.

**IT SOUNDS A BIT COMPLICATED – CAN YOU SUMMARISE THE PROCESS TO FOLLOW?**

Generally speaking, you should be able to identify at the outset which of these routes is the correct one to follow. However, there is a Memorandum of Understanding between the PO, FSO and the Central Bank of Ireland which, among other things, is designed to ensure that:

*Figure 1 summarises the two main 'routes' that can be followed where you have a complaint relating to your pension.*



- any complaints from consumers received by the Central Bank of Ireland are referred to the relevant Ombudsman; and
- where a complaint is received directly by either Ombudsman, and that Ombudsman considers that the complaint does not come within his jurisdiction, he will refer it to the other Ombudsman and will at the same time inform the consumer of the reason(s) for this.


**IS THERE A CHARGE TO THE COMPLAINANT?**

No. Trustees or other persons involved in the management of a pension scheme may not charge a fee for investigating a complaint where the IDR applies. Likewise, regulated financial service providers are required to seek a resolution to any complaints with consumers and may not charge a fee for doing this.

As regards complaints referred to the relevant Ombudsman, neither the PO nor the FSO charge a fee for investigating complaints. However, where you engage the services of a professional person to make a complaint on your behalf, for example a solicitor, any fees arising from that person will not be reimbursed by the Ombudsman, regardless of the outcome of their investigation.

**IS THE FINAL DETERMINATION OF THE OMBUDSMAN BINDING?**

Yes. The finding of the PO or FSO is legally binding on both parties, subject only to appeal by either party to the High Court. A party has 21 calendar days from the date of the PO or FSO's finding in which to appeal to the High Court.

**ARE THERE ANY PLANS TO SIMPLIFY THE PROCESS?**

Yes. In April 2013 the Minister for Social Protection announced a number of reforms to strengthen pension governance and regulation. These reforms included the amalgamation of the offices of the PO and the FSO.

This is designed to simplify the current arrangements and to provide a one-stop shop for queries on pensions and financial products. It will also remove the potential for the kind of uncertainty that can arise under the current regime, in terms of which Ombudsman should investigate a particular complaint.

**From the ACOI Pensions Working Group.** ICQ

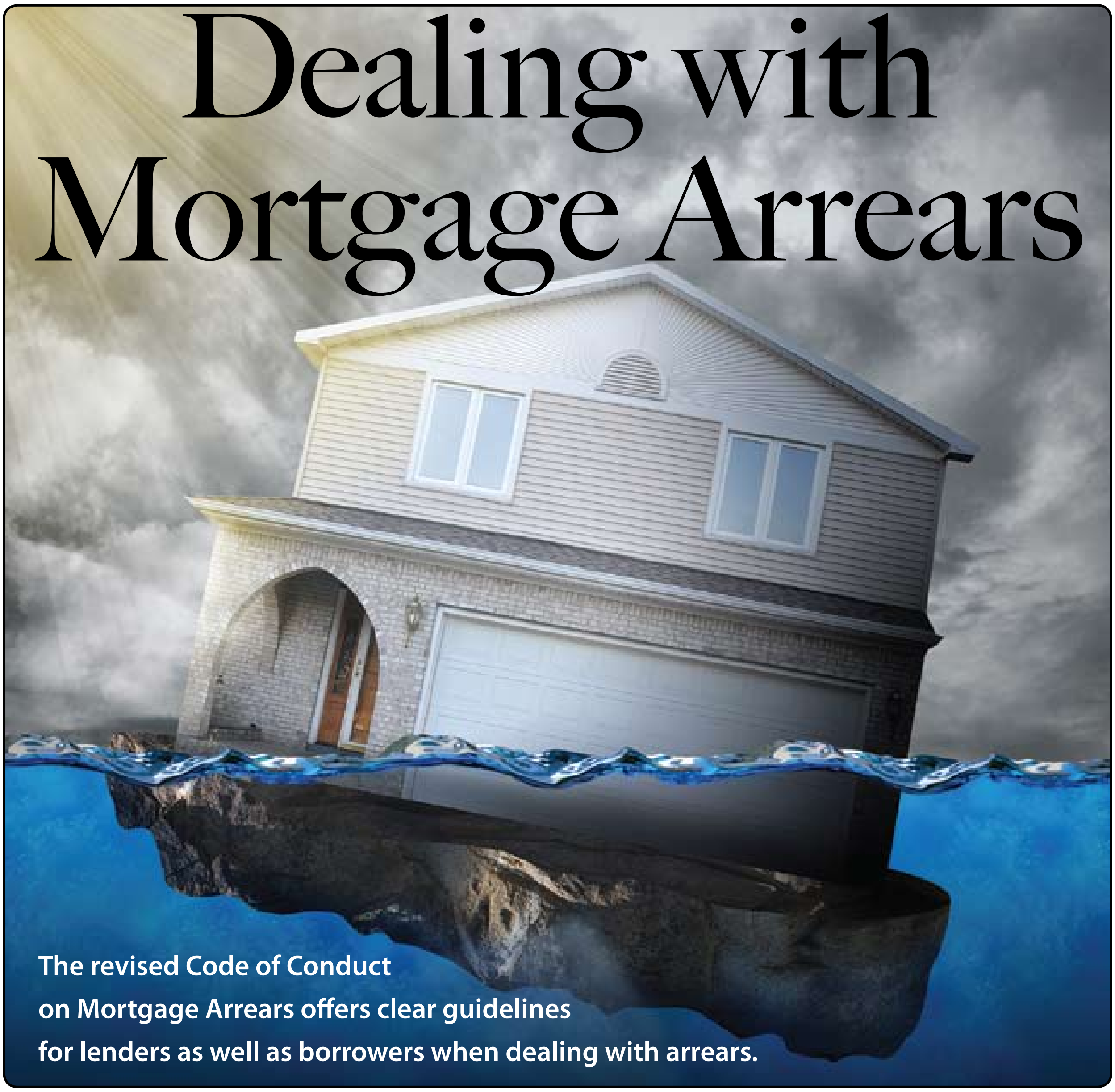
# EVENTS SCHEDULE 2014

The Association of Compliance Officers in Ireland

Non CPD Events, **all others CPD EVENTS**

| DATE | TOPIC | SPEAKER(S) | VENUE | TIME |
|---|---|---|---|---|
| **02.04.2014** | Regulatory Developments in the Funds Industry – a closer look at Client Assets (CP71) and UCITS Rule Book (CP77) Workshop | Rosemary Hanna, CBI<br>Brian Cahalin, Appian Asset Management,<br>Kevin O'Doherty, Compliance Ireland | The Hilton Hotel, Charlemont | 08.30 Registration<br>9.00-12.00 Workshop |
| **09.04.2014** | The Challenges Facing Compliance Officers: Q&A Series – Part 2 | Mary Kirwan, AIB Group<br>Melanie Blake, Walkers<br>Joe Beashel, Mathesons Solicitors<br>Philip Brennan, Chairman, ACOI. | The Hilton Hotel, Charlemont | 08.30 Registration<br>9.00-12.00 Workshop |
| **23.04.2014** | AML Review: Lesson Learned | Brian Binchy, Ernst & Young | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **30.04.2014** | UK Bribery Act: Implications for Irish Financial Companies | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **30.04.2014** | Ethics Debate | Dr. Dónal Donovan, UL<br>Jim Power, Friends First<br>Mark Kennedy, Mazars | Chartered Accountants Hse | 17.30 -20.30 |
| **07.05.2014** | PPI: Lessons Learned and How to Change Policies | Sinéad Ovenden, Deloitte | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **14.05.2014** | Dispute Resolution Versus Court Proceedings | Bríd Munnelly, Matheson | TBC | 12.00 Registration<br>12.30-13.30 Seminar |
| **16.05.2014** | ACOI Annual Dinner | Neil Delamere | The Guinness Storehouse | 18.00 Reception<br>19.30 Dinner |
| **21.05.2014** | Data Protection Regulation Seminar | Denis Kelleher | TBC | 12.00 Registration<br>12.30-13.30 Seminar |
| **04.06.2014** | Personal Insolvency: Experience to Date | Arrears Group/Eversheds | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **11.06.2014** | The Challenges Facing Compliance Officers: Q&A Series – Part 3 | TBC | The Hilton Hotel, Charlemont | 08.30 Registration<br>9.00-12.00 Workshop |
| **TBC (June)** | International Financial Sanctions | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **25.06.2014** | Pensions: Challenges | Madeleine Delaney, The Pensions Board | TBC | 12.00 Registration<br>12.30-13.30 Seminar |
| **10.07.2014** | Compliance Careers: Open Day | TBC | TBC | 08.30 Registration<br>9.00-13.30 Careers Day |
| **17.07.2014** | Financial Advertising | Bernie Mooney, Central Bank | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **24.07.2014** | Credit Unions Working Group Seminar | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **TBC (Sept)** | Ethics Seminar | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **24.09.2014** | The Challenges Facing Compliance Officers: Q&A Series – Part 4 | TBC | The Hilton Hotel, Charlemont | 08.30 Registration<br>9.00-12.00 Workshop |
| **08.10.2014** | Financial Crime/ Electronic Investigation | Grant Thornton | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **14.10.2014** | Prudential Regulation and Governance Seminar | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **TBC (Oct)** | ACOI Annual Conference | TBC | TBC | 08.00 Registration |
| **TBC (Oct)** | UCC Event | Philip Brennan, ACOI | UCC | 17.00-19.00 |
| **04.11.2014** | Update on the Arrears Landscape from a Regulatory Perspective | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **12.11.2014** | Compliance Officer – Champion of the Consumer | TBC | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |
| **19.11.2014** | ACOI Graduation Ceremony | Philip Brennan, ACOI | TBC | 17.30-19.00 |
| **TBC (Dec)** | Whistleblowing:<br>The Protected Disclosures Act<br>A summary of protections and obligations | Philip Brennan, ACOI Chairman | Chartered Accountants Hse | 12.00 Registration<br>12.30-13.30 Seminar |

Seminars and Events may be subject to change by the discretion of the ACOI.




The revised Code of Conduct on Mortgage Arrears (the "Code") became effective from July 2013 and replaced previous Codes. A number of changes and new features were included in the Code which are outlined in this summary.

The changes and new features of the revised Code are as follows:

**REVISED DEFINITION OF PRIMARY RESIDENCE:** This is a two-fold definition which previously enabled the Code to apply to (a) a residential property which a borrower occupies as his primary residence in this State and (b) a residential property in this State which is the only property owned by a borrower.

So, if a borrower owned a residential property elsewhere in the world, the Code could not be applied to the residential property owned by him in this State. This has been altered, and the Code now applies to residential property, which is the only residential property in this State owned by a borrower, regardless of other worldwide residential assets.

**GREATER CLARIFICATION OF DEFINITION OF "NOT CO-OPERATING BORROWER:"** Lenders may set a fair and reasonable time period for a borrower to deliver financial information. There must be failure to meaningfully engage during the three month period in which the borrower has also failed to meet agreed repayment terms and/or has an arrears balance, before he/she can be classified as "not co-operating". In greater recognition of the impact of being classified as not co-operating, lenders must issue a 20 business day warning letter outlining the implications of being classified as a not co-operating borrower and they must provide specific information on how to avoid this classification.

**BOARD-APPROVED COMMUNICATIONS POLICY:** This requirement replaces the three unsolicited communications per month. Contact with borrowers must be "proportionate and not excessive" taking into account their individual needs and circumstances. This is to protect borrowers from unnecessarily frequent contacts, while enabling lenders to make necessary contact to progress resolution of arrears cases.

**UNSOLICITED PERSONAL VISITS:** Prior to classifying a borrower as not co-operating, where all other attempts at contact have failed, and on giving five days' notice, a lender can now visit a borrower's primary residence without the borrower's advance agreement.

**REVISED MORATORIUM ON LEGAL PROCEEDINGS:** The 12 month moratorium on legal proceedings no longer exists. Co-operating borrowers must be given at least eight months from the date arrears first arise, or three months from the date co-operating borrowers have been notified of their options (such as voluntary surrender, trading down, or arrangement under the Personal Insolvency Act 2012), whichever is the later, before legal action can commence, provided that the borrower is notified immediately before proceedings are issued. There is no longer a provision to extend these periods while the lender is dealing with complaints, or pending determination of an appeal by the Financial Services Ombudsman.

**REVISED 4-STEP MARP PROCESS:** The Mortgage Arrears Resolution Process (MARP) now has four steps; communication with borrowers, obtaining financial information, assessment and resolution. The appeals process no longer forms part of MARP and is dealt with separately in the Code.

**SWITCH FROM TRACKER RATE:** Lenders may offer borrowers in financial difficulties an alternative repayment arrangement which requires a change from an existing tracker mortgage to another mortgage type. This only applies when that option is affordable, there is no other sustainable option that would allow the borrower keep the tracker rate' when the arrangement offered is a long-term sustainable solution and when the only alternative option is repossession of the home.

**STANDARD FINANCIAL STATEMENT (SFS):** Lenders must provide the SFS to the borrower at the earliest opportunity, and offer assistance with completing it. Temporary arrangements can be put in place to prevent arrears from worsening while the SFS is being completed and assessed.

**IMPROVED TRANSPARENCY FOR BORROWERS:** Increased information in the MARP Booklet is required to include: key features of alternative repayment arrangements being offered and how they work; explanations of other options (e.g. voluntary surrender, trading down); the meaning and implications of "not co-operating"; information on the use of confidentiality agreements; the borrower's right of appeal; links to other information websites and a summary of the lender's communications policy.

*"The Mortgage Arrears Resolution Process (MARP) now has four steps; communication with borrowers, obtaining financial information, assessment and resolution. The appeals process no longer forms part of MARP and is dealt with separately in the Code."*

**TARGETS AND INCENTIVES:** Staff targets or incentives must not impair the quality of communication with borrowers in financial difficulties, or how the borrower is treated by the lender, and must take into account compliance with the requirements of the Code.

**ARREARS SUPPORT UNIT (ASU) TELEPHONE CALLS:** ASU telephone calls to and from borrowers must be recorded and maintained, and will be considered personal data of both the staff member and the borrower.

**RECORD AND ANALYSIS OF APPEALS:** Lenders must maintain up to date details of all appeals received, and undertake an appropriate analysis on a regular basis, for escalating to the lender's ASU, its compliance and risk function, and senior management.

**From the Arrears Working Group** ICQ

# The ABCs of the SSM

**Later this year the Single Supervisory Mechanism will become fully operational, paving the way for increased banking union within the Eurozone.**

In light of the vulnerabilities in the banking sector and the sovereign debt crisis, the European Commission called for the establishment of a banking union in May 2012 that would restore confidence both in banks and in the Euro. It was decided to create a 'single supervisory mechanism' (SSM) for the oversight of banks. The SSM is one of the 'three pillars' agreed by the EU institutions as underpinning banking union, the others being the Single Resolution Mechanism and the Common Deposit Guarantee Scheme.

In October 2013,[1] two regulations were published in the Official Journal of the European Union (OJEU) that confer powers on the European Central Bank (ECB) to act, in cooperation with national supervisors, as the prudential supervisor of banks in the Eurozone and other participating Member States. The ECB will be responsible for the direct supervision of significant banks, while the national supervisors or national competent authorities (NCAs) will be responsible for the direct supervision of less significant banks. Together, the ECB and the NCAs comprise the SSM, which will assume its responsibilities from November 2014 onwards. Within the SSM, the ECB will have the exclusive authority to grant and withdraw authorisations for the pursuit of the business of banking.

*"Within the SSM, the ECB will have the exclusive authority to grant and withdraw authorisations for the pursuit of the business of banking."*

## WHAT INSTITUTIONS FALL WITHIN SCOPE OF THE SSM?

The SSM will be responsible for the supervisory oversight of all credit institutions established within the 17 Eurozone Member States. It is worth noting that most Irish banks (including IFSC banks etc) are likely to be within scope of the SSM.

While non-Eurozone Member States are not automatically captured by the SSM, these States can opt to join the SSM where the national competent authority establishes a close co-operation with the ECB. It is envisaged that the ECB will be charged with supervising approximately 130 of the more significant banks, representing in excess of 80% of banking assets within the Eurozone.

A decision as to whether a bank is significant will depend on a variety of factors including:

- The total value of its assets – i.e. that the value exceeds €30 billion.
- The importance of the bank to the economy of the Member State in which it is located (or to Europe as a whole) – for example, where the institution is one of the three most significant credit institutions in a Member State.
- The significance of the cross-border activity in which the bank is involved.
- Whether the bank has requested and/or received public financial assistance from the European Stability Mechanism (ESM) or the European Financial Stability Facility (EFSF).

The ECB can also directly supervise any of the less significant banks if it so wishes.

## WHAT ARE THE ECB'S MAIN SUPERVISORY FUNCTIONS?

The ECB's supervisory functions will include, but will not be limited to the authorisation or withdrawal of authorisation of all banks supervised by the SSM; assessing the acquisition and/or disposal of qualifying holdings in

these banks (save in the event of bank resolution); and ensuring compliance with the prudential requirements of EU banking rules or setting a higher standard requirement where necessary.

## WILL THE ECB HAVE ANY INVESTIGATORY POWERS?

Such that the SSM be sufficiently effective, the legislative package provides the ECB with investigatory powers in addition to its supervisory role. These powers will be similar to those already vested in NCAs under EU law and will include, for example, the power to conduct investigations and collect information.

## WHAT IS THE ECB COMPREHENSIVE ASSESSMENT?

The ECB is performing a comprehensive assessment prior to the SSM coming into effect. Despite recent attempts by banks to strengthen their balance sheets, weaknesses remain. These have been intensified in the market by a lack of transparency and concerns about the overall levels of risk. The comprehensive assessment commenced in November 2013 and comprises three elements:

(i) a supervisory risk assessment to review key risks including liquidity, leverage and funding;

(ii) an asset quality review (AQR) to review the quality of banks' assets including valuation provisions; and

(iii) a stress test to assess the resilience of bank balance sheets to adverse economic scenarios.

The banks in Ireland that are subject to the comprehensive assessment are Allied Irish Banks plc, Merrill Lynch International Bank Limited, Permanent tsb plc, The Governor and Company of the Bank of Ireland, and Ulster Bank Ireland Limited.

**From the ACOI's Prudential Regulation and Governance Working Group.** ICQ

*[1] Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, and Regulation (EU) No 1022/2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013.*

# Educational Programmes

**The ACOI has range of educational programmes aimed at professionals working within the regulatory risk and compliance functions in the financial services sector.**

As the leading recognised and accredited educational organisation for those working at all levels in regulatory risk and compliance within the Irish financial services industry, the ACOI provides best- in-class educational programmes for Regulatory Risk and Compliance professionals in Ireland. These programmes are consistently delivered to the highest standards. Through this high-quality education provision, ACOI will contribute significantly to improving the standards and quality of the Regulatory Risk and Compliance profession in Ireland and will promote high ethical standards within the financial sector. The courses include the following:

## PROFESSIONAL CERTIFICATE AND PROFESSIONAL DIPLOMA IN COMPLIANCE

The Professional Certificate and Professional Diploma in Compliance are offered jointly by the Association of Compliance Officers in Ireland (ACOI), the LIA, the Insurance Institute of Ireland and the Institute of Banking.

Candidates who successfully complete the first two modules are awarded the Professional Certificate in Compliance.

A further two modules are required for the Professional Diploma in Compliance. The Institute of Banking is a recognised college of University College Dublin (UCD). Therefore, those who successfully complete the Professional Certificate in Compliance and the Professional Diploma in Compliance receive these academic awards from UCD.

These qualifications are recognised as the benchmark qualifications for Compliance Professionals in all sectors of the financial services industry and are Level 7 on The National Framework of Qualifications (NFQ).

## PROFESSIONAL CERTIFICATE IN FINANCIAL CRIME PREVENTION

The Professional Certificate in Financial Crime Prevention has been carefully designed to equip MLROs and others who specialise in this area with the necessary competence to fill this role and is the only accredited qualification at Level 9 on the NFQ.

Designed to equip existing or aspiring staff in Financial Crime Prevention

Units with the specialist skill to mitigate this key compliance risk, this programme will expose participants to an applied learning approach utilising both case studies and experienced guest speakers.

The programme is targeted at Financial Crime Prevention specialists across all financial services firms.

The primary motivation underpinning the development of the Professional Certificate in Financial Crime Prevention is to provide a learning opportunity for compliance and/or other relevant professionals to develop the necessary intellectual capital to ensure that their organisations meet their current and future regulatory responsibilities in relation to financial crime prevention.

Admission is open to individuals with a relevant undergraduate degree in a business or legal discipline at Level 8 NFQ.

### PROFESSIONAL CERTIFICATE IN DATA PROTECTION

As well as a thorough understanding of the regulatory and legislative framework, professional practice in the area of data protection requires judgements and decisions to be made for many scenarios which require considerable intellectual capability. This is a Level 9 programme on the NFQ.

The primary motivation underpinning the development of the Professional Certificate in Data Protection is to provide a learning opportunity for compliance and/or other relevant professionals to develop the necessary intellectual capital to ensure that their organisations meet their current and future regulatory responsibilities in relation to data protection.

Admission is open to individuals with a relevant undergraduate degree in a business or legal discipline at Level 8 NFQ.

### MA IN ETHICS (CORPORATE RESPONSIBILITY)

The MA in Ethics (Corporate Responsibility) is a specialist pathway within the MA in Ethics offered jointly by Dublin City University and Mater Dei Institute of Education, in partnership with the Association of Compliance Officers in Ireland (ACOI), designed to provide participants with the conceptual knowledge and practical skills that are needed to design and manage within organisations the ethical, social and governance aspects of business decision-making and operation. Participants will learn how to apply business ethics concepts and frameworks to the responsible management of organisations. This is a Level 9 programme on the NFQ.

The programme is offered on a part-time basis over two years. It leads to the award by Dublin City University of the MA in Ethics (Corporate Responsibility). The Corporate Responsibility pathway has been developed as a response to the ongoing demand for knowledge, skills and competence in business ethics and corporate responsibility. Lectures are driven by a creative and active integration between theory and practice, which is facilitated by collaborative group learning, discussions, debate and analysis of various case scenarios. The programme is interdisciplinary, drawing on the expertise of lecturers from MDI, the DCU Institute of Ethics, DCU Business School, the DCU Faculty of Humanities and Social Sciences and practitioners in the field of Business Ethics in Financial Services.

*"The the ACOI provides best in class educational programmes for Regulatory Risk and Compliance professionals in Ireland."*

### GRADUATE DIPLOMA/MSc IN COMPLIANCE

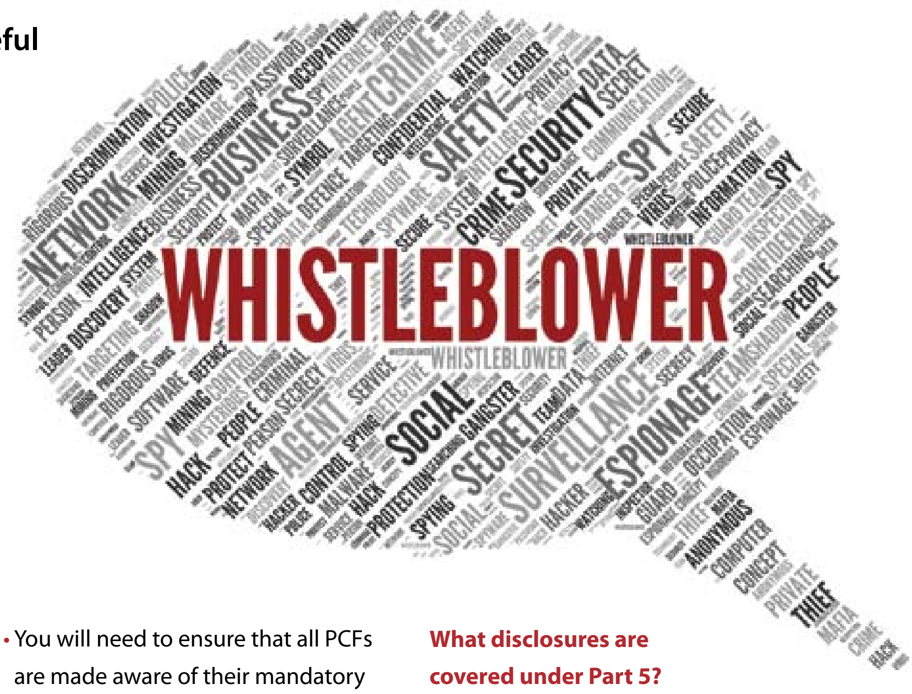
This programme will provide participants with the multi-disciplinary skills to participate more effectively in the ever-changing world of Compliance Management at the most senior level. The design of the programme has been influenced by extensive discussions with industry and compliance professionals. All modules will be taught by recognised leaders in the particular subject/module area. The MSc in Compliance is awarded by University College Dublin (level 9 on the NFQ).

Students will study six modules over three semesters for a Graduate Diploma in Compliance. Students who achieve an honours award classification in the Graduate Diploma are eligible for the award of a MSc in Compliance on the successful completion of two additional modules.

**For more information on the educational programmes offered by the ACOI visit www.acoi.ie or contact the ACOI Education Officer @ 01 669 8506 or info@acoi.ie.** ICQ

# A Guide to Whistleblowing

**Philip Brennan offers some useful guidance and insights into making whistleblowing disclosures to the Central Bank of Ireland.**




There has been significant debate and press coverage in recent months about whistleblowing – particularly relating to the Gardaí. We continue to await the enactment of the Protected Disclosures Act (now promised before Easter) which will provide protection for employees generally who blow the whistle about wrongdoing in employment. However, the provisions of Part 5 of the Central Bank (Supervision and Enforcement Act) 2013 which became effective on 1 August 2013 for disclosures to the Central Bank of Ireland (CBI) of breaches of financial services law has, strangely, received very little press coverage.

While the legislation protects qualifying persons who voluntarily make certain disclosures, it also mandates (while offering similar protections) that certain persons operating in positions of 'significant influence' in financial services firms must make such disclosures.

This legislation is of key importance to Compliance Officers for a number of reasons:

- If you are the Head of Compliance, you may come within the scope of the requirement to make mandatory disclosures to CBI.
- You will need to ensure that all PCFs are made aware of their mandatory responsibilities.
- You will need to ensure that your firm's process for escalating breaches to the CBI is updated.
- You will need to ensure that the new provisions are incorporated into your firm's whistleblowing procedures and briefed to staff;
- You will need to ensure that management and your Human Resources Department are aware of the new protections afforded to employees who raise such issues with CBI.
- When updating your whistleblowing policy and procedures in the wake of the soon to be enacted Protected Disclosures Act, you will need to differentiate Part 5 protections from the Protected Disclosures Act and seek to provide attractive alternatives to employees generally to raise concerns under the latter provisions with the firm itself or with an appointed service provider.

### What disclosures are covered under Part 5?

The scope of the legislation is extremely wide and covers disclosures made by a person in good faith to an appropriate person (defined as the Central Bank, its employees, officers or authorised persons) where he or she has reasonable grounds to believe it will show that:

- An offence was or is being committed under financial services legislation;
- a prescribed contravention was or is being committed;
- a provision of financial services legislation was or is being contravened; or
- evidence regarding any of the above was, is being, or is likely to be deliberately concealed or destroyed.

A disclosure made anonymously does not carry protection.

Financial services legislation includes the entire provisions of a number of Acts covering areas such as banking, insurance, assurance, building societies, credit unions, unit trusts, investment intermediaries, consumer credit, investor compensation, dormant accounts, asset covered securities, unclaimed life assurance policies and consumer protection. It also covers specific sections of other enactments such as the Companies Acts, MiFID and the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.

For a complete list of Designated Enactments and Designated Financial Instruments and for a list of Prescribed Contraventions, go to Schedule 2 (Page 196) and Section 33AN (Page 97) respectively of the latest administrative consolidation of the Central Bank Act 1942, as prepared by the Law Reform Commission which can be found at http://bit.ly/1jZw7rU

## VOLUNTARY DISCLOSURES

### Confidentiality

CBI is prohibited from disclosing, outside of CBI, the identity of a person who makes a protected disclosure, other than for the limited purposes set out in the legislation (principally related to proper investigation of the matter concerned).

CBI procedures require that if the information a person raising a concern has provided is transferred internally within the CBI, the identity of the person will be protected as far as possible. A concerned person's identity will not be routinely disclosed to other areas of the CBI and a concerned person's identity will only be disclosed internally if deemed necessary.

### How to make a voluntary disclosure?

There are three choices:

- *E:* confidential@centralbank.ie
- *T:* 1890 130014
- *P:* Whistleblowing Desk
  Central Bank of Ireland
  P.O. Box 559
  Dame Street
  Dublin 2

## MANDATORY DISCLOSURES

### Obligation on PCFs to report breaches of financial services legislation

A person appointed by a regulated financial services firm to perform a pre-approval controlled function ("PCF") has an obligation to make a disclosure, as soon as it is practicable to do so, to the CBI or to one of its officers, employees or authorised persons where :

- An offence was or is being committed under financial services legislation;
- prescribed contravention was or is being committed;
- a provision of financial services legislation was or is being contravened; or
- evidence regarding any of the above was, is being or is likely to be deliberately concealed or destroyed and where he or she believes any such information will be of material assistance to the CBI.

All such disclosures carry the protection of the legislation provided they are made in good faith. Failure by a PCF to make such a disclosure could be the basis for an investigation and action by CBI against him or her under the fitness and probity regime.

The mandatory disclosure requirement does not apply if the person has a 'reasonable excuse'. The legislation is not expansive as to what constitutes a reasonable excuse and cites two examples only: self-incrimination and where the information has already been disclosed by another person.

The legislation does not impose a materiality measure for mandatory disclosures although the requirement that the information needs to be "of material assistance to the CBI" suggests that not every minor breach must be reported. CBI recently issued a Consultation Paper CP79:2014 on the handling of protected disclosures by their office and I have no doubt that more clarity on determining what matters must be disclosed by PCFs will feature in responses.

### Who are PCFs?

PCFs are persons who hold designated positions of influence in a regulated firm which are pre-approval controlled functions under CBI Fitness & Probity rules. A list of these can be found at http://bit.ly/1i1Fw0P

### Confidentiality

As in the case of voluntary disclosures, CBI is prohibited from disclosing, outside of CBI, the identity of a person who makes a mandatory protected disclosure, other than for the limited purposes set out in the legislation (principally related to proper investigation of the matter disclosed).

CBI procedures require that if information a PCF has provided is transferred internally within the CBI, while the identity of the PCF will be disclosed internally, those other areas of the CBI will handle the PCF's identity with care.

### How to make a mandatory disclosure?

PCFs making mandatory disclosures are requested by CBI to use a prescribed form (http://bit.ly/1gK2fSx) This can then be submitted by e-mail or post as follows:

- *E:* Protecteddisclosures@centralbank.ie
- *T:* 1890 130015 (for general queries only)
- *P:* PCF Disclosure Desk
  Central Bank of Ireland
  P.O. Box 559
  Dame Street
  Dublin 2

**What protections apply?**

In the case of both voluntary and mandatory disclosures, the person making the disclosure will be entitled to the following protections:

**Protection from Civil liability**

Where a person makes a protected disclosure he or she will not be liable to damages for doing so, unless it was made in the knowledge that information furnished was false or misleading.

**Protection where disclosure of identity by CBI is necessary**

As stated earlier, the identity of the person making the protected disclosure cannot be disclosed by CBI without their consent except insofar as it may be necessary:

- for the effective investigation of the matter; or
- for the purposes of a number of specific financial services enactments

.

Where such disclosure is necessary, CBI is required to make all reasonable efforts to notify the person in advance.

**Protection of employees from 'Penalisation' by an employer**

An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee:

- for having made a protected disclosure (unless the employee in making the disclosure or furnishing information did so knowing it to be false or misleading),
- for giving evidence in any proceedings under financial services legislation; or
- for giving notice of his or her intention to do any of the above.

'Penalisation' in this connection means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment and includes:

- suspension, lay-off, or dismissal;
- the threat of suspension, lay-off or dismissal;
- demotion or loss of opportunity for promotion;
- transfer of duties, change of location of place of work;
- reduction in wages or change in working hours;
- the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty);
- unfair treatment;
- coercion, intimidation or harassment;
- discrimination, disadvantage or adverse treatment;
- injury, damage or loss, and
- threats of reprisal.

Any employer who penalises or threatens to penalise an employee who makes a protected disclosure commits an offence and can be subject to a maximum fine on indictment of €250,000 or imprisonment for up to five years, or both.

If such an employee is dismissed, the employee may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007.

**Right of action in tort**

If a person is victimised because they or any other person:

- honestly made a protected disclosure;
- gave evidence in any proceedings under financial services legislation; or
- gave notice of their intention to do either of the above,

he or she has a right of action in tort against the person who victimised them. Examples of victimisation include:

- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to a person's employment;
- injury, damage or loss; or
- a threat of reprisal.

An employee cannot pursue a right of action for victimisation and a right of action under any provision of any other enactment in respect of the same matter.

***Philip Brennan is Chairman of ACOI and Managing Director of Raiseaconcern.com, a specialist firm that advises on and operates whistleblowing schemes for employers.*** ICQ

# ACOI AGM 2013

The AGM of the ACOI took place in Chartered Accountants House in January and was preceded by a Prudential Working Group seminar entitled "Fitness and Probity: What you need to know for 2014 (General and Credit Unions)." Guest speakers included Mairéad Devine and Aoife Langford of the Central Bank of Ireland.

Keith Waine and Philip Brennan

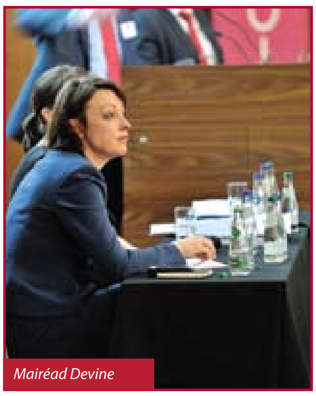

Denis Hevey


Róisín Byrne

Damian McKenna

AGM Delegates

Kathy Jacobs, Margaret Colgan and Olive Bolger



Mairéad Devine

Philip Brennan

Ken Hughes

Seán Smith

# GRADUATION DAY 2013

ACOI
The Association of Compliance Officers in Ireland

**THE 2013 ACOI GRADUATES** were presented with their certificates at a special award ceremony in the House of Lords building in Bank of Ireland on College Green. A total of 108 students successfully completed the Professional Diploma in Compliance in 2013 and many of them were in attendance to receive their diplomas from Patrick Brady, Director of Policy and Risk at the Central Bank of Ireland, and Philip Brennan, Chairman of the ACOI.

All the photographs from the event will be found on the ACOI's website and a selection of them are reproduced below.


*Anna Sadlo*


*Audrey Campbell*


*Aidan Conlon*


*Brendan Blake*


*Breda Horgan*


*Brendan Lyons*


*Coleman Hudson*


*Clíona Devery*


*Críostóir Mac Bradaigh*


Anne Marie Kane


Dorota Jakubiak


Dearbhaile O'Reilly


Duncan O'Connell


Edel O'Shea


Eddie Cassidy


Malgorzata Phalaris


Elaine McGann


Olivia Dunning


Fiach Ó Riain

# Banking

## Domestic

**CENTRAL BANK – CONSULTATION PAPER ON CALCULATION OF LIQUIDITY COVERAGE RATIO FOR INTERIM OBSERVATION PERIOD**

The Central Bank has published a Consultation Paper outlining its proposed approach to the calculation of the Liquidity Coverage Ratio (LCR) during the interim observation period until such time as the Article 460 of the CRR liquidity delegated act enters into force.

In accordance with Article 460 of CRR, the LCR will be further specified in detail in a European Commission delegated Act to be adopted by 30 June 2014. The Liquidity Coverage Requirement will become a prudential ratio requirement in 2015, from a date to be specified in the EC liquidity delegated Act.

The draft Central Bank guidelines contain:

- a definition and calibration of the LCR;
- a definition of High Quality Liquid Assets;
- in and out-flow rates applicable to each reporting category;
- guidance on identifying certain in and out-flow categories; and
- further guidance on completing the Liquidity Coverage reporting templates.

Comments should be sent no later than 16 April 2014.

**CENTRAL BANK – ANNOUNCEMENT OF APPOINTMENT OF DIRECTOR OF CREDIT INSTITUTIONS**

The Central Bank has announced the appointment of Sharon Donnery to the role of Director of Credit Institutions, with effect from 25 March 2014.

## European/International

**EUROPEAN COMMISSION – COMMUNICATION TO EUROPEAN PARLIAMENT ON PROPOSED DIRECTIVE RECASTING THE DEPOSIT GUARANTEE SCHEMES DIRECTIVE**

The European Commission has published a communication to the European Parliament on the proposed Directive recasting the Deposit Guarantee Schemes Directive (94/19/EC) (the recast DGSD) which states that although the political agreement diverges considerably from the Commission's original legislative proposal, it does achieve the objectives behind the original proposal.

The aim of the recast DGSD is to:

- improve depositors' access to the guarantee, with reduced repayment deadlines, single contact points for cross-border failures, and improved individual depositor information;
- introduce financing rules for DGSs, in particular requiring mandatory ex-ante financing from the banking sector;
- further harmonise the scope of coverage; and
- specify the role of DGSs in the crisis management framework.

The Council of the EU adopted the proposed Directive at first reading on 3 March 2014. The Parliament is expected to adopt the final text of the Directive without amendment at second reading, which is expected at its plenary session between 14 and 17 April 2014.

**ECB – PUBLICATION OF DECISION IDENTIFYING THE CREDIT INSTITUTIONS SUBJECT TO COMPREHENSIVE ASSESSMENT**

The ECB has published its decision on the credit institutions that will be subject to comprehensive assessment by the ECB. The relevant credit institutions are listed in the Annex to the decision.

The assessment is an important step in preparing the single supervisory

mechanism and, more generally, towards bringing about greater transparency of the banks' balance sheets and consistency of supervisory practices in Europe.

The goals of the comprehensive assessment are three-fold:

- transparency – enhancing the quality of information available on the condition of banks;
- repair – identifying and implementing any necessary corrective actions; and
- confidence building – assuring all stakeholders that banks are fundamentally sound and trustworthy.

The ECB will carry out a comprehensive assessment of large banks before 3 November 2014 (before taking on the role as supervisor under SSM on 4 November 2014). In accordance with Article 33(4) of the Regulation establishing the SSM (Regulation 1024/2013), the decision provides that national competent authorities ("NCAs") responsible for supervising the listed credit institutions must submit "all information of relevance to the comprehensive assessment that the ECB requests.

**EBA: PUBLICATION OF FIFTH REPORT OF BASEL III MONITORING EXERCISE ON THE EUROPEAN BANKING SYSTEM**

The European Banking Authority has published its fifth report of the Basel III monitoring exercise on the European banking system. The exercise monitors the impact of the implementation of the Basel III requirements in the EU, based on the assumption of full implementation of the Basel III framework as of 30 June 2013 and 'static balance sheet' data.

The report provides an impact assessment of the following aspects:

- changes to banks' capital ratios under Basel III and estimates of any capital shortfalls. In addition, estimates of capital surcharges for G-SIB are included, where applicable;
- changes to the definition of capital that result from the new capital standard (CET1), a reallocation of regulatory adjustments to CET1 and changes to the eligibility criteria for Tier 1 and total capital;
- changes in the calculation of risk-weighted assets due to changes in the definition of capital and counterparty credit risk requirements;
- the introduction of a leverage ratio; and
- the introduction of the LCR.

**EBA: REPORT ON IMPACT OF DIFFERENCES IN LEVERAGE RATIO DEFINITIONS**

The European Banking Authority has issued a report which provides a policy analysis and quantitative impact assessment of aligning the current CRR definition of the leverage ratio exposure measure to the Basel III standard published by the Basel Committee on 12 January 2014.

This report is intended to inform the EU Commission in view of its delegated act on the definitions for the leverage ratio as per Article 456(1)(j) CRR, by which the capital measure and total exposure measure can be amended before the start of public disclosure in 2015.

**BIS: RECENT SPEECHES ON THE CHANGING ROLE OF CENTRAL BANKS AND THE RISE OF GLOBAL PROTECTIONISM**

The Bank for International Settlements has issued the following recent speeches:

(i) Speech by Tongurai Limpiti on 'The changing role of central banks in the new financial world'; and
(ii) Speech by Christian Noyer on 'Monetary policy and banks, and the rise of global protectionism.

**EBF: RECENT RESPONSES TO CONSULTATIONS AND DISCUSSION PAPERS**

The European Banking Federation has recently responded to the following:

(i) The European Central Bank's consultation on the Single Supervisory Mechanism framework regulation.
(ii) The European Banking Authority discussion paper on the methodology for the assessment of liquidity and funding risk under supervisory review.
(iii) The European Banking Authority consultation on draft RTS, ITS and guidelines related to the methodology for the identification of global systemically important institutions.

**ECB: PUBLICATION OF MANUAL ON ASSET QUALITY REVIEW (AQR)**

The European Central Bank has published its manual on the methodology for Phase 2 of the AQR. The manual provides guidance for the national competent authorities (NCAs) and their third-party support on carrying out the exercise. This Phase 2 will run until August 2014. The AQR process is due for completion in October when the results will be released together with the results of the stress test conducted in cooperation with the European Banking Authority.

The AQR is a key component of the comprehensive assessment, which aims to enhance the transparency of the balance sheets of significant banks, trigger balance sheet repair where necessary, and rebuild investor confidence prior to the ECB taking over its supervisory tasks in November 2014.

**EUROPEAN COMMISSION: PUBLICATION OF DELEGATED REGULATIONS**

The European Commission has published the following Delegated Regulations:

*(i)* Commission Delegated Regulation supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards further defining material exposures and thresholds for internal approaches to specific risk in the trading book.

*(ii)* Commission Delegated Regulation supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach.

*(iii)* Commission Delegated Regulation supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another;

(iv) Commission Delegated Regulation supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the definition of market.

# Funds

## Domestic

**CENTRAL BANK – UPDATED AIFMD Q&A**

The Central Bank of Ireland has published the Eighth Edition of the AIFMD Q&A (new developments on AIFs in liquidation, Transitional arrangements, Professional Investor Funds, MiFID authorisations and Delegation)

**CENTRAL BANK – CONSULTATION ON DEPOSITARY LITE FUNCTIONS**

The Central Bank published Consultation Paper (CP 78) concerning Article 36 of the AIFMD whereby Member States may allow an authorised AIFM to market units of non-EU AIFs it manages to professional investors in their territory. This marketing is subject to a number of restrictions. CP 78 concerns requirements which arise where a fund administrator provides both administration services and any of the services listed in Regulation 22(7) and/or 22(9) of the AIFM Regulations (depositary services). The consultation closes on 30 May, 2014.

**CENTRAL BANK – GUIDANCE RELATED TO AIFS AND THEIR SERVICE PROVIDERS (INVESTMENT MANAGERS AND INVESTMENT ADVISERS)**

The Central Bank issued Guidance related to AIFs and their service providers (Investment managers and Investment advisers).

**RESIDENT MONEY MARKET AND INVESTMENT FUNDS (MMIF) RETURN**

The Central Bank has published

- MMIF Notes on Compilation;
- MMIF Reporting Form;
- MMIF Worked Examples 2.0 - Derivatives, Securities Borrowing/ Lending and Overdrafts;
- MMIF In-House Validations; and
- MMIF Online Reporting Validation Guidelines.

These documents concern the Resident Money Market and Investment Funds (MMIF) return. The MMIF return replaces the OFI1 and Funds Annual Survey of Liabilities returns from April 2014. The first MMIF return is due to be reported in April 2014 in respect of the Q1 data.

**CENTRAL BANK REQUIREMENTS IN RELATION TO TRANSACTIONS WITH CONNECTED PARTIES**

In May 2013, the Central Bank included

new requirements in the UCITS and Non-UCITS Notices requiring the board of directors of investment companies to include a confirmation in relation to transactions with connected parties in the annual and where relevant, the half-yearly reports. These requirements are also reflected in the AIF Rule Book. The Irish Funds Industry (IFIA) Technical Committee has prepared a paper to assist funds prepare written procedures around the requirements. Please speak with your usual contact on our asset management and investment funds team if you need more information.

## European/International

**AIFMD**

ESMA has updated its Q&A on AIFMD by adding 17 new Q&A on reporting issues. ESMA intend that the Q&A will be continually edited and updated as and when new questions are received. Helpfully, the date each question was last amended is included after each question for ease of reference. The Q&A concern the practical application of the AIFMD and deal with the fine detail of the AIFMD requirements. The new Q&A are set out in Section III: Reporting to national competent authorities under Articles 3, 24 and 42.

On 10 March 2014, the European Parliament updated its procedure file on the proposed delegated Regulation setting out regulatory technical standards (RTS) determining types of alternative investment fund managers (AIFMs). The procedure file indicates that on 6 March 2014 the European Parliament extended the timeframe it has for examining the Regulation by three months. The Regulation was adopted by the European Commission in December 2013.

**UCITS V**

The EU Council issued a press release announcing that the text of UCITS V is ready to be adopted at first reading, before the Parliament adjourns for elections at the end of May.

UCITS V amends UCITS IV on depositary functions, remuneration policies and sanctions. The next step will be Parliament and Council adopting UCITS V at first reading. As currently drafted, Member States will have 18 months to transpose the directive into national law, and depositories will be given an additional 24-month transition period after the transposition deadline.

**UCITS COLLATERAL AND FINANCIAL INDICES**

ESMA has decided to revise its rules and allow all UCITS to receive all collateral in the form of transferable securities or money market instruments issued or guaranteed by a Member State, one or more of its local authorities, third countries or certain public international bodies. Previously ESMA had stated that no more than 20% of a UCITS fund's NAV could be received in collateral exposed to any one Government issuer. This relates to collateral received in the context of OTC transactions and EPM techniques, such as repo and stock-lending transactions. Use of the relaxed approach will be subject to additional disclosures and will require diversification across at least six different issues (with no one issue accounting for more than 30% of the UCITS fund's NAV).

Less helpfully, ESMA has clarified its disclosure requirements for UCITS using financial indices, which will make it harder for index providers to preclude competitors from accessing full calculation methodology.

# Investment Firms

## Domestic

**CENTRAL BANK – ACQUIRING TRANSACTION NOTIFICATION FORM**

The Central Bank has published a new "Acquiring Transaction Notification Form" for firms authorised under the Investment Intermediaries Act, 1995 (as amended) (the IIA). The form is to be used to provide prior notification to the Central Bank of a proposed acquisition of, or increase in, a direct or indirect qualifying holding in respect of firms which hold authorisations as Investment Business Firms under the IIA.

## European/International

**ESMA – PUBLICATIONS – "IMPROVED SECURITIES MARKET CONDITIONS, ALTHOUGH RISKS REMAIN ELEVATED"**

ESMA has published its first Report on Trends, Risks and Vulnerabilities No. 1, 2014, and its Risk Dashboard for 4Q 2013. The report looks at the performance of EU securities markets, assessing both trends and risks in order to develop a comprehensive picture of systemic and macro-prudential risks in the EU that can serve both national and EU bodies in their risk assessments.

ESMA's report finds that EU securities markets and investment conditions in the EU improved in the second half of 2013, based on better macro-economic prospects, which also contributed to reduced systemic risk in that period. However, overall risks remained at high levels for EU securities markets as reflected in the rapid propagation of uncertainty from emerging markets countries to EU markets in early 2014.

**IOSCO – CONSULTATION REPORT – A COMPARISON AND ANALYSIS OF PRUDENTIAL STANDARDS IN THE SECURITIES SECTOR**

The Board of the International Organization of Securities Commissions has published a Consultation Report "A Comparison and Analysis of Prudential Standards in the Securities Sector" which seeks to highlight similarities, differences and gaps among the different frameworks for securities commissions.

The objective of the report is to update IOSCO's 1989 Report on Capital Adequacy Standards for Securities Firms, based on the issues identified in the report.

Comments on the report can be submitted on or before 10 June 2014.

**ESMA – UPDATES LIST OF CCPS IN NON-EEA COUNTRIES**

ESMA has published an updated list of central counterparties (CCPs) established in non-EEA countries which have applied for recognition under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, CCPs and trade repositories (TRs) (EMIR)

**ESMA – UPDATES Q&A ON IMPLEMENTATION OF EMIR**

ESMA has recently published an updated version of its Q&A on the implementation of EMIR.

The updated Q&A includes a table of questions on pages six and seven, detailing which questions have been updated, as of 20 March 2014, and to which Article(s) in EMIR the updated questions relate. They concern:

- Intragroup transactions.
- Notional amounts.
- Risk mitigation techniques for OTC derivative contracts not cleared by a CCP.
- Reporting of outstanding positions following the entry into force of EMIR (backloading).
- Various issues relating to TR reporting requirements.

**ESMA – DISCUSSION PAPER ON DRAFT TECHNICAL STANDARDS FOR THE REGULATION ON IMPROVING SECURITIES SETTLEMENT IN THE EUROPEAN UNION AND ON CSD**

ESMA has published a discussion paper on draft technical standards for the Regulation on Improving Securities Settlement in the EU and on Central Securities Depositories.

The discussion paper seeks stakeholders' views on the possible contents of most of the regulatory technical standards (RTS) and implementing technical standards (ITS) ESMA is required to draft under the CSDR. The input from stakeholders will help ESMA in the development of the relevant technical standards to be drafted and submitted to the EC for endorsement in the form of Commission Regulations.

The discussion paper follows the structure of the CSDR, with the first section focussing on settlement discipline. The second part focusses on CSD authorisation, representing most of the technical standards under CSDR and where market feed-back is welcome.

ESMA will consider all comments received by 22 May 2014.

**ESMA – CONSULTATION PAPER ON DRAFT REGULATORY STANDARDS ON MAJOR SHAREHOLDINGS**

ESMA has issued a consultation paper on Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive.

The revised Directive harmonises transparency requirements relating to information about issuers whose securities are admitted to trading on an EU-regulated market and aims to enhance transparency in respect of the ownership structure of an issuer, to improve legal certainty and reduce the administrative burden for cross-border investors. The revised Transparency Directive also addresses the issue of the disclosure regime for new types of financial instruments that expose investors to an economic risk similar to when holding shares.

The consultation runs until 30 May 2014.

**ESMA – OPINION ON GOOD PRACTICES FOR STRUCTURED RETAIL PRODUCTS**

ESMA has published an opinion on structured retail products which sets out good practices for firms when manufacturing and distributing these products.

These good practices, that product providers could put in place to improve their ability to deliver on investor protection in particular, focus on:

- the complexity of the structured retail products they manufacture and distribute;
- the nature and range of investment services and activities undertaken in the course of business; and
- the type of investors they target.

ESMA states that although the good practices set out in Annex 1 to the opinion focus on structured products sold to retail investors, ESMA considers that they may also be a relevant reference for other types of financial instruments (such as asset-backed securities, or contingent convertible bonds), as well as when financial instruments are being sold to professional clients.

ESMA expects national competent authorities to embed these good practices in their supervisory approaches to structured retail product providers.

# Insurance

## Domestic

**INSURANCE FOCUSES IN FSO BI-ANNUAL REVIEW**

Recently, the Irish Financial Services Ombudsman (FSO) published its bi-annual review for the period July to December 2013. A new feature is the inclusion of information on findings against named firms. Interestingly, while there was a 35% decrease in the number of complaints made to the FSO (when compared to the first six months of 2013), the number of complaints requiring formal investigation increased by 8% compared to 2012 figures. Payment protection insurance (PPI) complaints comprised 45% of all insurance complaints during 2013; though this had decreased by 31% when compared to the first half of 2013.

**CENTRAL BANK REPORTS ON PPI REVIEW**

On 7 March 2014, the Central Bank issued a summary report on its review regarding PPI sales by certain credit institutions. The Central Bank found that 22% of the PPI sales reviewed were not compliant with the Consumer Protection Code 2012 (CPC) (including due to failures to comply with product suitability and record keeping requirements). The press release issued by the Central Bank includes a Q&A guide for consumers on PPI and information regarding the review undertaken.

**INSURANCE IRELAND COMMENTS ON PROPOSED NON-LIFE INSURANCE LEVY AND SIGNS MOU**

On 18 March 2014, Insurance Ireland issued a press release regarding proposals by the Minister for the Environment, Community and Local Government for a new 1% levy on non-life insurance policies (to create a distress fund to help those who cannot purchase flood cover). Insurance Ireland expressed surprise and disappointment and pointed out that it was in the process of finalising a Memorandum of Understanding (MOU) with the Office of Public Works (OPW) regarding exchange of flood data. On 24 March 2014, Insurance Ireland announced the finalisation of the MOU. Under the MOU, the OPW will provide Insurance Ireland with data on flood defence schemes it has completed so that this can be taken into account by insurers when assessing risk.

## European/International

**PARLIAMENT VOTE ON OMNIBUS II**

On 11 March 2014, the European Parliament voted to adopt Omnibus II. The approved text does not contain any significant changes to the draft published in November 2013. Omnibus II must now be formally adopted by the Council and is due to enter into force the day after its publication in the Official Journal. The Commission confirmed that it can now move to the next stage of implementation of Solvency II, which is the adoption of a Delegated Act to provide implementing rules.

**EIOPA UPDATES Q&A ON SOLVENCY II GUIDELINES**

On 13 March 2014, EIOPA updated its online Q&A on its guidelines for submission of information to national competent authorities under Solvency II. The updates address technical questions submitted to

EIOPA regarding proposed reporting templates. They also deal with certain errors which exist in the published templates and were referred to in the errata (corrections) document recently published by EIOPA.

**TREATMENT OF PEOPLE WITH CONVICTIONS AND RELATED OFFENCES – ABI GOOD PRACTICE GUIDE**

On 12 March 2014, the Association of British Insurers (ABI) in the UK published an updated version of its good practice guide on insurers' approach to people with convictions and related offences. The guide (dated 10 March 2014) sets out a number of high-level standards as to how UK (personal lines) household and motor insurers should treat people with convictions and related offences in relation to matters including the application process, renewals and mid-term adjustments and claims.

**UK FOS COMPLAINTS DATA FOR SECOND HALF OF 2013 – INSURANCE FOCUSES**

On 4 March 2014, the Financial Ombudsman Service in the UK (FOS) released its latest six-monthly complaints data for the period 1 July to 31 December 2013. Of all cases referred to the FOS during that period 76% related to PPI. Insurance-related complaints other than those relating to PPI dropped by 7% during the period. Notably, in excess of 1,000 people per day are requesting the FOS to resolve PPI problems.

**GI ADD-ONS IN THE SPOTLIGHT IN THE UK**

On 11 March 2014, the Financial Conduct Authority in the UK (FCA) published a report setting out provisional findings from its market study into general insurance (GI) add-ons. The FCA found that competition in the GI add-ons market is not effective and, as a result, consumers are overpaying for add-ons. To combat this, the report proposes solutions including a ban on pre-ticked ('opt-out') boxes and improving consumer access to information regarding add-ons on price comparison websites. Comments are invited by the FCA until 8 April 2014. Additionally, on 25 March 2014, the FCA published a paper regarding the effect of sales of add-ons on consumer behaviour. The FCA found evidence to suggest that the manner in which the add-on insurance is offered affects the consumer's behaviour. Examples include that consumers did not tend to shop around where the insurance add-on was disclosed only at the point of sale (following selection of a primary product).

**ABI COMMITS TO INVESTMENT IN TACKLING INSURANCE FRAUD**

On 14 March 2014, the Association of British Insurers (ABI) in the UK published a press release committing to invest £11.7 million in the Insurance Fraud Enforcement Department (IFED) in the UK over the course of the next three years. The ABI commented that the increased investment from its members is further evidence of the insurance industry's serious stance against insurance fraud and recognition of IFED's important role.

**SOLVENCY II FOCUS BY PRA – CONSULTATION ON GI TECHNICAL PROVISIONS AND INTERNAL MODELS**

On 17 March 2014, the Prudential Regulation Authority (PRA) in the UK issued a consultation paper on calculation of technical provisions and the use of internal models for general insurers under Solvency II. The paper contains a draft supervisory statement setting out the PRA's expectations in relation to maintenance of adequate technical provisions and sufficient capital. Comments are invited until 14 April 2014, but the PRA highlights that the consultation/statement may be amended/withdrawn in light of any future EIOPA requirements/guidance. In a recent update to the capital instruments section of its supervisory activities webpage, the PRA also reminded insurers that it expects them to enhance the quality of their capital (in preparation for the anticipated position under Solvency II) when issuing/amending capital instruments.

**IAIS UPDATE ON CAPITAL REQUIREMENTS FOR GLOBAL SYSTEMICALLY IMPORTANT INSURERS**

On 21 March 2014, the International Association of Insurance Supervisors (IAIS) published information on its recent consultation on proposed 'basic capital requirements' (BCR) for global systemically important insurers. This included a summary of the feedback it had received and a helpful table providing IAIS responses to key issues raised. A number of respondents emphasised that BCR should not increase or conflict with existing group capital requirements. Several respondents urged the IAIS to reconsider the proposed timing for the BCR.

**ABI PAPER ON THE FCA AND COMPETITION**

On 21 March 2014, the Association of British Insurers (ABI) in the UK published a paper on the new role of the FCA in promoting competition. The FCA has already begun a number of insurance sector market studies and thematic reviews in cases where it perceives that competition is not effective. While the ABI concludes that this may be an opportunity to improve the operation of markets and reward firms that offer consumers better choices, the paper makes certain recommendations. These include that the FCA should (a) work closely with the new UK Competition and Markets Authority and Government and (b) not operate a, one size fits all, approach when analysing competition.

### INSURANCE EUROPE – CONCERNS REGARDING DRAFT SOLVENCY II DELEGATED ACTS

On 12 March 2014, Insurance Europe issued a press release expressing concerns regarding the draft Solvency II Delegated Acts (which will provide implementation details regarding Solvency II and are currently being produced by the European Commission, but have not been made publicly available to date). Insurance Europe highlighted eight key issues which it believes should be re-examined. These include provisions on third-country equivalence, risk charges for long-term investments (which Insurance Europe believes are higher than necessary) and requirements regarding own funds.

### INSURANCE EUROPE – COMMENTS ON IMD 2

Insurance Europe recently issued a press release regarding the European Parliament's adoption of certain amendments to the draft revised Insurance Mediation Directive (IMD2). Insurance Europe expressed satisfaction that Member States will be permitted to decide whether to permit fees/commissions/non-monetary benefits from third parties in the context of insurance investment product sales. However, it criticised other approaches taken, including the effective ban on tying of insurance products. Further progress on IMD2 is not expected until after Parliamentary elections in May 2014.

### PROPOSED LONGEVITY RISK PROJECT BY THE OECD

On March 14 2014, the Organisation for Economic Co-operation and Development (OECD) published its project outline regarding mortality and life expectancy assumptions. Amongst other matters, the OECD aims to identify good practices and produce guidelines to improve management of longevity risk in calculating pensions and annuity payments. The study will examine the regulatory framework as well as market practice in this area and is expected to be completed in mid-2014.

### EIOPA SPEECHES ON ITS AMBITIONS, INCLUDING CONSUMER PROTECTION

EIOPA's Chairman recently delivered separate speeches on (a) its ambitions and (b) consumer protection in insurance. Key points highlighted in the respective speeches included the importance of Solvency II for the (re)insurance industry and that, following completion of the Solvency II work, EIOPA would increase its focus on supervisory convergence and effectiveness. Also of interest were comments made regarding empowering EIOPA to carry out its role with broader powers of inquiry and full access to individual company information. Other notable comments included that, in relation to consumer protection, financial service providers should go beyond what is legal and do what is legitimate, in the interests of their customers.

### FRC PUBLISHES FRS 103 FOR INSURANCE CONTRACTS

On 20 March 2014, the Financial Reporting Council in the UK (FRC) published Financial Reporting Standard (FRS 103) on Insurance Contracts (consolidated accounting and financial reporting requirements for entities in the UK and Ireland issuing insurance contracts and which apply FRS 102 as the basis for their accounting). The FRC also published a FRS 103 implementation guidance document, as well as an impact assessment and feedback statement document regarding the rules. The FRC expects FRS 103 to provide an interim solution while the International Accounting Standards Board completes its project to revise accounting for insurance contracts (following which the FRC will review FRS 103).

### REPORT ON EUROPEAN INSURANCE CONTRACT LAW

The report of an expert group established by the European Commission to investigate cross border trade in the context of European insurance law was recently published. The report identified certain impediments (related to costs and lack of legal certainty) in cross border insurance sales, as a result of differing contract laws of EU Member States. The types of insurance most affected by those impediments were noted to be life, motor and liability products. Notably, obstacles were found to be less significant for large risks insurance.

**EIOPA UPDATES ITS RISK DASHBOARD**

On 20 March 2014, EIOPA published its updated quarterly risk dashboard, based on data provided by certain large insurance groups. While this notes some improvement in the macroeconomic conditions in EU jurisdictions, it highlights that market and credit risk remain high, and that liquidity and funding risks have increased.

**PRA EXPLAINS USE OF BUSINESS MODEL ANALYSIS**

On 14 March 2014, an article regarding the use of business model analysis (BMA) in the PRA's supervision of insurers was published. The article confirms that BMA is a key aspect of the PRA's supervisory approach. It describes unique features of a typical insurer's business model (including a stylised insurer balance sheet) and describes how BMA helps to ensure that evolving risks are recognised by the PRA as part of its forward-looking supervisory approach. The PRA also describes the potential use of BMA by reference to two emerging market trends (the rise in price comparison websites and the growing market for non-standard annuities).

**FURTHER CONSULTATION ON INSURANCE CONTRACTS BILL IN THE UK**

The English and Scottish Law Commissions recently opened a further consultation on proposed clauses for an Insurance Contracts Bill. Amongst other matters, the proposed clauses deal with warranties and insurers' remedies for fraudulent claims made by members of group insurance arrangements. The consultation period closed on 21 March 2014. Responses will be reviewed together with the responses received to the initial consultation which closed in February 2014.

**KEY PROVISIONS OF THE UK MESOTHELIOMA ACT 2014 BROUGHT INTO FORCE**

On 3 March 2014, key provisions of the UK Mesothelioma Act 2014 were brought into force. The Act establishes the Diffuse Mesothelioma Payment Scheme which will compensate mesothelioma victims meeting certain eligibility criteria in the UK. Insurers engaged in the UK employers' liability market will be levied to cover the costs of the scheme (including compensation payments) under powers contained in section 13 of the Act (which comes into force on 1 September 2014). From 31 March 2014, insurers may be required to provide information in order to calculate how much they will be required to contribute.

# Cross Sectoral

## Domestic

**CENTRAL BANK PUBLISHES CONSULTATION PAPER ON HANDLING OF PROTECTED DISCLOSURES**

The Central Bank has published a Consultation Paper on the Handling of Protected Disclosures. The Central Bank (Supervision and Enforcement) Act 2013 (the Act) which was enacted on 11 July 2013, introduced new provisions providing protection for persons who, in good faith, make a disclosure regarding a possible or actual contravention of financial services legislation. It also provides for a mandatory disclosure regime for those performing pre-approval controlled functions (PCFs) relating to matters concerning any offence under, "prescribed contravention" of, or any other breach of financial services legislation which they believe will be of material assistance to the Central Bank.

The purpose of the Consultation Paper is to draw attention to the new provisions in the Act and to seek stakeholder views in relation to arrangements and policies to be put in place so as to create "an environment and structure that encourages those persons with relevant information to come forward with information to the Central Bank." It does not include any guidance, as anticipated in section 39 of the Act, on the assessment PCFs are required to make as to whether a disclosure is required to be made in any particular case.

The main provisions of the Consultation Paper include:

- **The Whistleblower Desk –** A Whistleblower Desk has been established to receive and manage disclosures from persons who wish to make protected disclosures. The Whistleblower Desk will answer questions about the process and clarify the disclosure to be made. The Central Bank will accept anonymous disclosures (although anonymous disclosures will not qualify as 'protected disclosures' for the purpose of the whistleblowing protections in the Act) and will also record all telephone calls on the dedicated Whistleblower telephone line.
- **Handling of Complaints and Business as Usual Disclosures –** Consumer complaints (which may fall within the definition of a protected disclosure under the legislation)

will be dealt with under the current regime i.e. through the Financial Services Ombudsman;

Complaints by regulated financial service providers, their agents and employees in relation to potential breaches of financial services legislation, provided in the 'ordinary course' (such as self-reporting to the Central Bank's supervisory team) and which might technically fall within the definition of protected disclosures in the Act, will not ordinarily be treated formally pursuant to the Central Bank's new Whistleblower procedures.

- **Feedback to the Whistleblower**
  The Central Bank will not inform Whistleblowers of what action, if any, has been taken as a result of their disclosure.
- **Disclosures by Persons Holding Pre-Approval Controlled Function Roles**
  In relation to disclosures by PCFs of prescribed contravention of financial services legislation (Section 38(2) of the Act), the Central Bank has established a dedicated email address and postal address to assist PCFs in complying with their legal obligations and to ensure a written record is maintained of what was reported and when it was reported.

Comments from stakeholders are invited up to 19 June 2014.

**CENTRAL BANK – THE MARKETS UPDATE – ISSUE 2**

The Central Bank has published Issue 2 of its "Markets Update" which advises interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and MiFID firms.

This issue covers topics such as AIFM reporting, Market Abuse – Industry letter on suspicious transaction reporting and Central Bank conference on effective banking and securities regulation.

The Market Update is available on the Central Bank website.

**DEPARTMENT OF FINANCE – CONSULTATION PAPER ON THE STABILISATION OF CREDIT UNIONS**

The Department of Finance has confirmed that the closing date for comment on the consultation paper "Stabilisation of Credit Unions" shall be extended from 28 April 2014 to 28 May 2014.

## European/International

**ESAs – PUBLIC CONSULTATION ON DRAFT GUIDELINES ON CONVERGENCE OF PRACTICES FOR FINANCIAL CONGLOMERATES**

The Joint Committee of the three European Supervisory Authorities (ESAs - EBA, ESMA and EIOPA) has launched a public consultation on its draft Guidelines on the convergence of practices aimed at ensuring consistency of supervisory coordination arrangements for financial conglomerates.

The purpose of the Guidelines is to enhance the level playing field in the financial market and reduce administrative burdens for firms and supervisory authorities. Their objective is to clarify and enhance cooperation between national competent authorities on cross-border groups that have been identified as financial conglomerates.

The public consultation will run until 12 June 2014.

**EUROPEAN COMMISSION – NEW STANDARDS ADOPTED TO INCREASE TRANSPARENCY OVER BANKERS' PAY AND RISK PROFILES**

The European Commission has adopted Regulatory Technical Standards (RTS) on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (so-called 'material risk takers'). These standards set out how to identify risk takers in banks and investment firms based on qualitative and quantitative criteria.

These standards supplement the requirements of the Capital Requirements Directive (CRD IV) which entered into force on 17 July 2013.

**EUROPEAN PARLIAMENT – PLANS TO FURTHER TIGHTEN ANTI-MONEY LAUNDERING RULES**

On 12 March, the European Parliament voted on new draft anti-money laundering rules to have the ultimate owners of companies and trusts listed in public registers in EU countries. The draft law would also require banks, auditors, lawyers, real estate agents and casinos, among others, to be more vigilant about suspicious transactions made by their clients. The European Parliament press release stated that "The aim is to make dodgy deals harder to hide and fight tax evasion".

**This Bulletin first appeared in an A&L Goodbody publication of 28 March 2014. The contents of this Bulletin are necessarily expressed in broad terms and limited to general information rather than detailed analyses or legal advice. Specialist professional advice should always be obtained to address legal and other issues arising in specific contexts.**

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