

# *Regulatory Times*

PwC Ireland  
Asset Management  
Regulatory News

*Welcome to our new  
quarterly PwC  
newsletter.  
It covers both local  
and international  
regulatory topics  
affecting the Irish  
funds industry.*



## What is hot this quarter?

- Ireland reduces minimum subscription for QIF and more
- Agreement reached on AIFM Directive
- Dodd Frank – impacts non US fund managers too
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# Ireland reduces minimum subscription for QIF and more



### ***QIF minimum subscription and investor criteria changes expected***

The Central Bank has reduced the minimum subscription for the Qualifying Investor Fund (QIF). It is now €100,000 – reduced from €250,000. Investors will need to be either MiFID professional investors or certify that they have the knowledge and experience necessary to understand the investment. Certification can also be made by a connected party of the fund, subject to certain conditions.

Existing QIFs will need to revise their prospectus and subscription agreement in order to avail of the new criteria.

### ***Central Bank of Ireland replaces the Financial Regulator***

As of 1 October 2010, the office of the Financial Regulator has been dissolved and the Central Bank of Ireland is now the single regulatory body responsible for the authorisation and supervision of Irish regulated investment funds.

### ***Fund Director Corporate Governance Code***

A new corporate governance code for investment fund directors is expected to be agreed shortly following discussions between the Irish Funds Industry Association and the Central Bank of

Ireland. The Central Bank of Ireland has indicated that there will be a limit on the number of directorships that it considers appropriate. This means that any persons with a number of directorships above what is allowed will need resign from positions in order to fall into line with the code. The EU Commission has issued a green paper on corporate governance. This is of significance to the proposed Irish code as any standards outlined in the EU green paper will need to be incorporated into any code issued by the Irish Regulator.

### ***Number of other key policy changes***

- With effect from 1st September 2010, all Irish CIS will be permitted, subject to certain requirements, to charge fees and expenses to capital.
- Also effective from 1st September 2010, it is provided that, for sub-funds of an umbrella fund, the sole name of an investment manager will be permitted in the title of the sub-fund under certain conditions.
- Additionally, as of September 1, Dublin is no longer restricted by regulations that prevent US and Asian asset managers from exclusively launching Irish versions of their hedge fund strategies.

# Agreement reached on AIFM Directive

After a year and a half of lobbying and frequently acrimonious debates, European finance ministers have agreed on a text for the Alternative Investment Fund Managers Directive (AIFMD) with representatives of the EU Parliament. Getting to this stage has been a long and difficult process, with a breakthrough only achieved by virtue of the Belgian presidency carefully steering a compromise on third country access to the EU which was finally acceptable to both the UK and France. The EU Parliament agreed on the final directive on 11 November 2010. We are likely to have the AIFMD come into force across the EU in early 2013.

The Directive will affect any alternative asset manager, wherever in the world it is based, seeking to raise institutional capital in Europe. No major surprises have emerged from the final negotiations.

**Scope:** all asset managers with more than Euro 100m geared or Euro 500m ungeared under management (aggregated) will be subject to regulation and be required to maintain potentially significant amounts of regulatory capital.

**Investors:** the Directive seeks to limit marketing of funds mainly to “MiFID professionals” but individual member states will have the flexibility to allow categories of AIF to be marketed to retail investors within their countries.

**Transparency and Disclosure:** managers’ processes and internal reporting and external reporting to investors and regulators across a wide range of business areas will need significant enhancement.

**Asset stripping:** for private equity managers, an unlevel playing field remains, with a 24 month post-acquisition ban imposed on distributions, capital reductions, share redemptions and acquisition of own shares by portfolio companies after an AIF acquires control (Control is 50% or more of the voting shares in the target.)

**Depositories:** while the precise quantum and scope of depository liability remain to be agreed in the Level 2 implementing measures, the range of responsibilities of custodians and

depositories is significantly increased.

**Delegation:** significant incremental constraints arise around delegation and the roles and responsibilities of providers and those who are outsourcing functions, particularly in relation to fund management services.

**Reward:** reward and remuneration structures will need to change.

## Third Country Measures

With regard to the “Third country debate” which was the battle ground for the fiercest arguments, the final compromise is not as bad as was initially anticipated and is a substantially better result for industry than some of the earlier drafts:

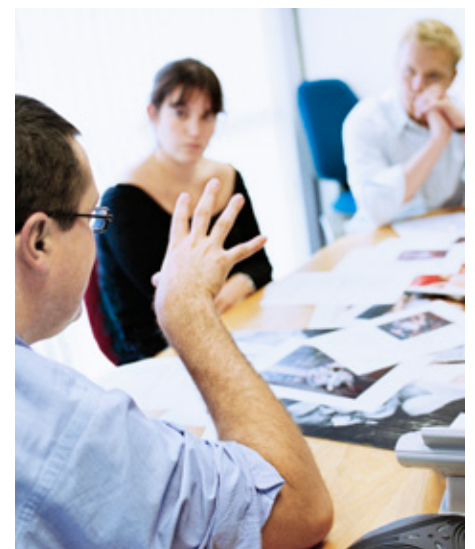
- From 2013 until 2018 existing country by country private placement rules governing distribution of non-EU funds throughout the EU will remain in place (i.e. the status quo) subject to:
  - non-EU managers’ funds complying with certain disclosure and reporting requirements and, in the private equity space, complying with the anti-asset stripping rules,
  - non-EU managers managing EU funds being registered with a Member State competent authority;
  - EU managers running off-shore funds appointing a “quasi” depository, and
  - Regulatory cooperation agreements being in place between the non-EU domicile of the manager or fund and the Member State into which the fund is to be sold.
- From 2015, a parallel passport regime will be introduced, which will permit non-EU funds to be distributed on a pan-EU basis, provided certain criteria are met; and
- In 2017, ESMA, the new European Securities Markets Authority will review the operation of the private placement regime and determine whether it recommend it be continued or terminated.

The criteria or conditions that third countries and managers located there will be required to meet under a passport regime are yet to be finally established.

However, such conditions are likely to include:

- existence of appropriate regulator to regulator cooperation agreements;
- appropriate anti-money laundering and anti-terrorist financing laws and regulations in the third country;
- a network of OECD model tax information exchange agreements with EU member countries; and
- full compliance, to the extent legal, by a local manager with the AIFMD regime and “authorisation” by that manager with a member state of reference for the purposes of supervision of EU focused activities.

Although few will be entirely happy with the final position on AIFMD, workable compromises have been reached on a number of the key issues. We are now moving into the Level 2 process of developing implementing measures, where details in many important areas will be fleshed out. The industry will need to reinvigorate its lobbying efforts over the next few months to influence the final outcome on the AIFMD regime. It is also now extremely important for managers to start, if they have not already, to examine the operational consequences on their business models. This examination will also enable identification of some of the unintended or misunderstood consequences which should be fed into the lobbying process.



# *Dodd Frank - impacts non US fund managers too*

President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or the Act) on July 21, 2010. The law was initially proposed by the two members of congress pictured and hence it was agreed that the Act would be named after them. While the Act's main focus is on U.S. financial institutions and markets it is likely to have significant impact on non-US asset managers who have clients in the United States.

Managers who were formerly exempt from registration will need to register as investment advisers with the US Securities and Exchange Commission (SEC). In the coming year, the SEC will draft rules to implement Dodd-Frank. All advisers that are required to register with the SEC must do so before July 21, 2011. The new law applies to traditional investment advisers, advisers of hedge and private equity funds. Venture capital is exempted but definition to be clarified by SEC. The new law adds an exemption for foreign private advisers. The investment adviser must meet all the following conditions in order to qualify for this exemption;

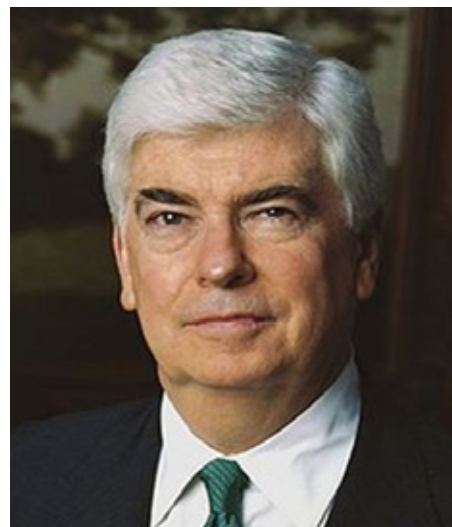
- No place of business in the US
- Fewer than 15 clients in the US
- Less than \$25m in AUM
- Cannot sell generally to the public

While the filing with the SEC is relatively straightforward, an asset manager must ensure that if inspected by the SEC that its firm meets all the SEC requirements, i.e. a compliance program, best execution etc most of which are similar to European MiFID requirements. Given that all advisers who are required to register with the SEC must do so before July 2011, asset managers need to start examining whether they need to register, and if so, ensuring that they are SEC compliant.

If you were not a registered adviser and need to register now this will involve the following:

- Registering by July 21, 2011
- Designating a CCO: Existing or New Hire
- Implementing a Compliance Program
- Implementing Code of Ethics and Personal Trading
- Maintaining certain Books and Records
- Being subjected to SEC examination oversight and possible enforcement action
- SEC Reporting

There could be a delay of several months on the implementation of some parts of the Dodd Frank reform as Congress has yet to approve funds necessary for its implementation. For example, the SEC needs to hire 800 new employees. The delay is likely to last through early December and could stretch into 2011.



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**Chris Dodd & Barney Frank**

Members of Congress

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# Regulator's voice Newcits concerns

*A number of Regulators have voiced concerns regarding the highly complex investment strategies being introduced within Newcits funds.*

The AMF, the French regulator, has voiced concerns regarding Newcits which stem from the future implementation of UCITS IV. Under UCITS IV, a fund manager will be able to distribute a UCITS fund throughout Europe after obtaining approval from just one European regulator. The AMF currently limits access to Newcits funds, imposing high minimum levels of investment in order to protect investors, a policy not applied by other regulators. Following UCITS IV implementation, the AMF will no longer have the power to apply this policy, as national regulators will not be able to prevent or limit the distribution of funds.

Hong Kong, the fifth-largest UCITS market outside the EU, has also voiced concerns over the distribution of alternative UCITS funds within its jurisdiction. There has been a change in tone from the Asian hub creating a fear that its confidence in the

UCITS brand may be ebbing. Even two years after the saga of mini-bonds, there is still some nervousness in Hong Kong when products are associated with derivatives, leverage, and counterparty risks. The SFC, the Hong Kong regulator, is examining all new UCITS registrations in great detail. They will monitor the trend in order to decide whether UCITS-compliant hedge funds should be regulated under hedge fund guidelines rather than those applying to UCITS funds. There are also ongoing discussions regarding creating a pan Asia fund similar to UCITS. Such a product would have a few hurdles to overcome i.e. no single currency, political union similar to the EU. Work in this area may accelerate if dissatisfaction continues with the UCITS framework.

The Committee of European Securities Regulators (CESR) is unanimous on its dislike of the term 'Newcits'. A majority of members of CESR have agreed it was necessary to recognise different categories of UCITS funds.

For now, watch this space... in order to maintain the reputation of the UCITS brand, future regulation of Newcits is imminent, what form this may take remains to be seen.

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## The UCITS IV race is on – who will transpose first

The UCITS IV implementation deadline is 1 July 2011 but a number of fund domiciles have already started to put the wheels in motion to transpose this new legislation into their local laws.

**Austria:** Draft legislation is expected before the end of December.

**France:** Draft legislation is expected before the end of December.

**Germany:** Draft legislation in place with expected transposition into national law by 31 December 2010.

**Ireland:** Legislation currently being drafted with expected transposition by end of April 2011.

**Italy:** Estimated to take 3-4 months to draft legislation with transposition date expected on or around 1 July 2011 deadline.

**Luxembourg:** Draft legislation was issued in early July 2010 and transposition expected by 31 December 2010.

**Netherlands:** Consultation period ended in June, with legislation expected to be in place by 31 December 2010.

**Spain:** Draft legislation text expected early next year with transposed anticipated by 1 July 2011.

**UK:** Consultation due from FSA next month with transposition expected in early 2011.

# Singapore to introduce tighter rules for hedge funds in 2011

*Singapore stands out from the world's other hedge fund centres for its light-touch registration but this is all about to change. As the G20 group of nations tries to reshape the global financial architecture, Singapore is under pressure to conform.*

Currently, managers serving 30 or less sophisticated investors -- as opposed to retail clients -- can operate without having a license from the Monetary Authority of Singapore (MAS) regardless of their total level of assets under management.

The MAS is due to introduce tighter rules for hedge funds in 2011.

These will include a requirement for managers with more than S\$250 million (\$186.8 million) in assets under management to obtain a license from MAS, even if their client base is purely made up of sophisticated investors.

Funds requiring a license will have to put in place independent compliance arrangements and set aside additional risk-based capital to the S\$250,000 base already required. Managers overseeing less than S\$250 million in assets with fewer than 30 sophisticated investors will still be exempt from holding a license.



## Management Companies.... are you ready for UCITS IV?

UCITS IV introduces the concept of having one core Management Company to manage the full multi-jurisdictional UCITS product suite. From July 1, 2011, there will no longer be a requirement to establish a fully fledged Management Company in every Member State in every member state where the UCITS fund is located. Going forward, Fund Managers will have the option to centralise their asset management operations within one domicile.

While a number of aspects of the UCITS IV Directive are optional such as mergers and master feeder structures, all Management Companies must ensure that they are now compliant with the Markets in Financial Investment Directive (MiFID) provisions which have been added to UCITS IV. The Markets in Financial Investment Directive (MiFID) is a European Union Law that provides harmonised regulation for investment services across the Member States of the European Economic Area

(EEA). This also applies to self managed UCITS. Some of the main business changes to UCITS Management Companies in relation to this are summarised as follows:

- Enhancements to General Organisational Requirements and Procedures, i.e. complaints handling,
- Requirement for internal audit and compliance functions,
- New requirements on maintenance of Books & Records i.e. retention of records, recording of subscription and redemption orders etc.
- New rules on Conflicts of Interests Management: i.e. independence of conflicts management, conflicts of interest policy etc.
- Application of MiFID Conduct of Business Rules to all UCITS Management Companies: i.e. duty to act in the best interest of UCITS and investors, best execution, inducements etc.

Management Companies irrespective of whether they are considering centralising their operations within one domicile will need to comply with this UCITS IV requirement by July 2011.

Key to these new provisions is how the Management Company or Self-managed UCITS demonstrates compliance with the new requirements. Regulators will expect to see fully documented procedures and monitoring programmes in place from 1 July 2011. It should be a key focus by Management Companies to consider now how they will meet these new compliance requirements and indeed how such compliance frameworks will need to be implemented. The Regulatory Business Plan for each UCITS will be a core central information document to as to how these compliance measures have been addressed.

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# ***FATCA rules big issue for European managers***

***Fund managers have been warned that if their distributors do not register with the US tax authority (IRS) over new rules coming into play in 2013 they will be hit with an unwanted 30 per cent tax bill.***

Asset managers will have to comply by the start of 2013 with the Foreign Account Tax Compliance Act (FATCA)

This legislation came about because the US congress was concerned that wealthy US taxpayers were hiding assets abroad and were not reporting taxable income in the US.

FATCA is designed to force foreign financial institutions, including investment funds and hedge funds which engage in business in the US, to enter into agreements with the IRS to identify and report on US taxpayers annually.

The new rules mean that asset managers will have to go through all their investor records to see if any could be US taxpayers. Managers, however, will be able to do so only with investors that invest with them directly. In this case, it will be the responsibility of the intermediaries that distribute an asset manager's funds. All intermediaries will need to be FATCA compliant, or the funds themselves will face 30 per cent tax. Asset managers will need to ensure that their distributors are adhering to the FATCA rules or their funds will be penalised.

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# ***CESR gets legal powers... ESMA in place January 2011***

***On the 22nd of September, the European Parliament signed off on a landmark deal to create a cross-border fund supervisor with unprecedented rule-making powers.***

On 1 January 2011, the European Securities and Markets Authority (ESMA) will officially replace the Committee of European Securities Regulators (CESR).

There are three European Supervisory Authorities (ESAs) being created; the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).

Each will have its headquarters in a different European city, with EIOPA based in Frankfurt, the EBA in London and ESMA working from its new headquarters in Paris.

ESMA will draw up specific rules for countries and firms to follow, and will impose mandatory standards and guidelines.

ESMA's main priority will be to draw up a single rule book in Europe, seen as an essential step to introducing properly coordinated cross-border supervision.

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# ***Hong Kong Regulator introduces KID equivalent***

The SFC has already jumped the gun on UCITS IV by introducing an Asian Key Investor Document (KID) equivalent. An SFC authorised fund is required to prepare the Product Key Facts Statement for the purpose of disclosing the key information in respect of the product to investors. Product Key Facts Statement shall be part of the offering document of the authorised fund. As such, an asset manager has to prepare the Key Facts Statement if they would like to distribute their investment fund in Hong Kong. Once UCITS IV has been implemented this will mean that any asset managers selling into Hong Kong will need a Product Key Facts Statement and a Key Investor Document for each of their funds.

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