



## REGULATORY UPDATE 4/2008

This newsletter is available online at:

[http://www.complianceireland.com/documents/CI\\_Newsletter\\_August08\\_web.pdf](http://www.complianceireland.com/documents/CI_Newsletter_August08_web.pdf)

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Welcome to the **August 2008** regulatory update from **Compliance Ireland**. In this Newsletter:

### Compliance Document Templates

We have added a new sample of contents for an Anti-Money Laundering & Counter-Financing of Terrorism Manual to our recently created webpage

<http://www.complianceireland.com/compliancedocs.html>

On this webpage you will find samples of the contents pages for a MiFID Compliance Manual, MiFID Procedures Manual, MiFID Compliance Monitoring Programme/Plan and the Anti-Money Laundering/Counter-Financing of Terrorism Manual. Over time we will do likewise for Data Protection Procedures, Consumer Protection Code and other regulatory risk programmes.

- [http://www.complianceireland.com/documents/MiFID\\_Procedures\\_Manual.pdf](http://www.complianceireland.com/documents/MiFID_Procedures_Manual.pdf)
- [http://www.complianceireland.com/documents/MiFID\\_Compliance\\_Manual.pdf](http://www.complianceireland.com/documents/MiFID_Compliance_Manual.pdf)
- [http://www.complianceireland.com/documents/MiFID\\_Risk\\_Based\\_Compliance\\_Monitoring\\_Plan.pdf](http://www.complianceireland.com/documents/MiFID_Risk_Based_Compliance_Monitoring_Plan.pdf)
- [http://www.complianceireland.com/documents/AMLCFTManualContentTemplate20080728\\_version10\\_.pdf](http://www.complianceireland.com/documents/AMLCFTManualContentTemplate20080728_version10_.pdf)

If you would like to know more about these documents please contact us at [email@complianceireland.com](mailto:email@complianceireland.com) or phone +353 1 425 5962 / 5972

### INDEX OF TOPICS

#### COMPLIANCE IRELAND TRAINING

page 3

- 2008 Quarter 3 & Quarter 4 training course dates: A new course on *Establishing the Internal Audit Function* (½ day course) joins list of topics on which we train.

#### FINANCIAL SERVICES - IRELAND

page 5

## Newsletter – August 2008

page 1/10

- Financial Regulator sanctions and fines investment business firm Apex Fund Services (Ireland) Limited (a fund administrator) €5,000 and two directors each €20,000 (22 August 2008)
- Financial Regulator warns consumers to check the excess on home insurance policies (22 August 2008)
- Financial Regulator Publishes Amended Prospectus Rules (18 August 2008). Effective from 15 September 2008
- Financial Regulator Publishes New Guidance Note for Valuation of Assets of Money Market Funds (18 August 2008)

## DATA PROTECTION - IRELAND

page 7

- Data Protection Commissioner publishes new Data Protection Code of Practice for the Insurance Sector (20 August 2008)
- Institute of Chartered Accountants in Ireland investigating data security concerns (19 August 2008)
- Loss of Department of Social and Family Affairs information held by the Office of the Comptroller and Auditor General (11 August 2008)
- Launch of [www.privacy.ie](http://www.privacy.ie): Ireland's new website dedicated to data privacy issues

## COMPLIANCE IRELAND TRAINING

### 2008 Quarter 3 & Quarter 4 training course dates

Full details of all course seminars and workshops can be found at <http://www.complianceireland.com/Training.html> or <http://www.compliancetraining.ie>.

All courses can be tailored for in-house delivery too. Please contact us at the details appearing at the end of this Newsletter for further information. Bookings can be made by email to [bookings@complianceireland.com](mailto:bookings@complianceireland.com).

**CPD Credits/Hours:** Our courses are accredited by the Institute of Bankers (QFA, CPD Members, LCOI (i.e. ACOI) and CeB) and Insurance Institute of Ireland (QFA, LCOI (i.e. ACOI), CIP and CFD Members). Solicitors and Accountants may claim CPD hours from their membership bodies as may others with CPD requirements. Formal and informal CPD hours vary depending upon your professional association's rules. Please contact us ([email@complianceireland.com](mailto:email@complianceireland.com)) or your professional association if you have any queries on the amount of CPD hours that may be claimed for our courses.

### [ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS \(FULL DAY\) - \(DUBLIN\)](#)

9.00am to 5.00pm Tuesday 9<sup>th</sup> September 2008 (Clarion Hotel, North Wall Quay, IFSC)  
9.00am to 5.00pm Thursday 9<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)  
9.00am to 5.00pm Tuesday 13<sup>th</sup> November 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)  
9.00am to 5.00pm Tuesday 9<sup>th</sup> December 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

### [UK ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS \(FULL DAY\) - \(BELFAST\)](#)

9.00am to 5.00pm Thursday 6<sup>th</sup> November 2008 (Europa Hotel, Belfast, Northern Ireland)  
Cost: £500 (no VAT)

### [COMPLAINTS HANDLING AND TREATING CUSTOMERS FAIRLY \(HALF DAY\)](#)

9.00am to 1.00pm, Thursday 11<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

### [MiFID - UNDERSTANDING MiFID AND ITS OPERATIONAL IMPLICATIONS \(HALF DAY\)](#)

9.00am to 1.00pm Tuesday 16<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
9.00am to 1.00pm Tuesday 18<sup>th</sup> November 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

### [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

#### [BANKS & INVESTMENT BUSINESS FIRMS:](#)

9.00am to 5.30pm, Tuesday 23<sup>rd</sup> September 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

### [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

#### [INSURANCE FIRMS:](#)

9.00am to 5.30pm, Tuesday 14<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

**DIRECTORS DUTIES AND CORPORATE GOVERNANCE OF CREDIT, FINANCIAL AND INSURANCE INSTITUTIONS REGULATED IN IRELAND (HALF DAY)**

9.00am to 1.00pm, Thursday 25<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

**ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM RISK-BASED APPROACH UNDER 3RD EU DIRECTIVE (HALF DAY) - (DUBLIN)**

9.00am to 1.00pm, Tuesday 30<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
9.00am to 1.00pm, Thursday 30<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

**ESTABLISHING THE INTERNAL AUDIT FUNCTION (HALF DAY)**

9.00am to 1.00pm, Tuesday 7<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

**HOW TO HANDLE A FINANCIAL REGULATOR (IFSRA) INSPECTION (HALF DAY)**

9.00am to 1.00pm, Thursday 16<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

**RISK-BASED COMPLIANCE MONITORING FOR FINANCIAL INSTITUTIONS (HALF DAY)**

9.00am to 1.00pm, Tuesday 21<sup>st</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

**DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT (FINANCIAL INSTITUTIONS) (FULL DAY)**

Financial Firms:

9.00am to 5.00pm, Tuesday 28<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

**NEWSLETTER CONTINUES ON NEXT PAGE**

## IRELAND

### **Financial Regulator sanctions and fines investment business firm Apex Fund Services (Ireland) Limited (a fund administrator) €5,000 and two directors each €20,000: (22 August 2008)**

A timely reminder, in the form of a regulatory sanction and significant fines, was issued today by the Financial Regulator about the veracity of statements provided to it by applicants and regulated persons.

Section 10(16) of the Investment Intermediaries Act 1995 (IIA) provides that *"It shall be an offence for a proposed investment business firm or any other person to apply for authorisation under this section knowingly or recklessly using false or misleading information, or knowingly or recklessly making false or misleading statements, in relation to an application for an authorisation under this section."*

The Financial Regulator announced today (Friday 22 August 2008) that it has entered into a Settlement Agreement with Apex Fund Services (Ireland) Limited (Apex), Mr John Bohan (Director) and Mr Peter Hughes (Director).

The agreement related to suspected breaches of section 10(16) of the IIA in relation to information provided by Apex in its application for authorisation as a fund administrator. The agreement also states that the Financial Regulator has reasonable cause to believe that suspected breaches involved the participation of two of the company's directors, Mr John Bohan and Mr Peter Hughes.

The Financial Regulator reprimanded Apex Fund Services (Ireland) Limited, Mr John Bohan and Mr Peter Hughes and required the firm to pay a monetary penalty of €5,000 and Mr John Bohan and Mr Peter Hughes to pay a monetary penalty of €20,000 each. The Financial Regulator confirms that the parties cooperated without delay.

Settlement Agreement here -

[http://www.complianceireland.com/documents/Settlement\\_Agreement\\_Apex\\_Bohan\\_Hughes\\_Aug08.pdf](http://www.complianceireland.com/documents/Settlement_Agreement_Apex_Bohan_Hughes_Aug08.pdf)

Apex was authorised on 30 July 2007 as Investment Business Firm to administer collective investment schemes. Apex operates from offices at Enterprise House, Watersedge, Midleton, Co. Cork.

The case, although unfortunate for Apex and its directors, serves as a timely reminder to other regulated persons (and applicants) that the Financial Regulator will not hesitate in sanctioning firms and senior management where it believes information passed to it is false or misleading. The Apex case and recent market abuse cases demonstrate that it is incumbent upon directors and senior management to carefully review and approve statements provided to the regulator and the market. The sanction is evidence yet again that the Financial Regulator will hold directors and senior management responsible for the failures of their firms.

The Financial Regulator has sanctioned at least 5 firms and imposed monetary penalties of €210,000 so far this year. €40,000 of these fines were levied against directors of the sanctioned firms.

Sanctions such as these should be of immense concern to firms and directors personally. The Financial Regulator clearly has the resources and willingness to proceed against firms falling short of market standards. Robust corporate governance and compliance procedures are essential to help prevent such failures.

## **Financial Regulator warns consumers to check the excess on home insurance policies (22 August 2008)**

The Financial Regulator published on Friday 22 August 2008 new online home insurance cost comparisons on its personal finance website, [www.itsyourmoney.ie](http://www.itsyourmoney.ie). The cost comparisons show the annual home insurance premiums for a range of properties throughout Ireland.

Head of Consumer Information at the Financial Regulator, Sharon Donnery explained how the excess could affect the quotes received: *"While some quotes may appear to offer better value, it is important to check what excess applies, as the higher the excess, the more you have to pay from your own pocket if you have to make a claim. Some insurers will reduce your premium if you opt for a higher excess. However, you need to consider whether the saving you would make is worth it, as you won't be able to claim for losses that are less than your excess."*

Read more at <http://www.financialregulator.ie>

## **Financial Regulator Publishes Amended Prospectus Rules (18 August 2008). Effective from 15 September 2008**

Amended Prospectus Rules under section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 were released on Monday 18 August 2008.

The current Prospectus Rules, published in March 2006, were amended to address issues raised by the respondents to a consultation and to reflect changes arising from the Financial Regulator's experience as 'competent authority' since March 2006.

In summary, the amendments clarify the responsibilities of issuers, offerors or persons seeking admission to trading, the targets to which the Financial Regulator is committed and disclosures to be made in prospectus documents.

The new Prospectus Rules will come into force on 15 September 2008. The lead-in time is to ensure that firms have adequate time to amend their internal procedures and processes to ensure compliance with the amended Prospectus Rules. The Financial Regulator has clarified that during the intervening period, the Prospectus Rules issued in March 2006 will continue to apply. Queries relating to the new prospectus rules can be made to 01-410 4711 or [markets@financialregulator.ie](mailto:markets@financialregulator.ie).

A briefing note on the amended Prospectus Rules, a full copy of the new Prospectus Rules and links to Prospectus Directive material is here -

[http://www.complianceireland.com/Resources.html#Prospectus\\_Rules](http://www.complianceireland.com/Resources.html#Prospectus_Rules)

## **Financial Regulator Publishes New Guidance Note for Valuation of Assets of Money Market Funds (18 August 2008)**

The Financial Regulator published a new Guidance Note 1/08 - on Valuation of Assets of Money Market Funds. The purpose of this Guidance Note is to establish the conditions under which a collective investment scheme, which proposes to establish as a money market fund, is permitted to:

- follow an amortised cost valuation methodology and/or
- refer to money market fund in its title.

At the same time the Financial Regulator published a revised Guidance Note 1/00 - Valuation of the Assets of Collective Investment Schemes clarifying the extent to which a collective investment scheme, which is not a money market fund, may value some of their assets using an amortised cost method of valuation. Queries relating to the Guidance Note can be made to 01-410 4538.

Guidance Note 1/08 and Guidance Note 1/00 are here –  
<http://www.complianceireland.com/Resources.html#UCITSFunds>

## DATA PROTECTION

### **Data Protection Commissioner publishes new Data Protection Code of Practice for the Insurance Sector (20 August 2008)**

The Office of the Data Protection Commissioner, today (Wednesday 20 August 2008), published a data protection Code of Practice for the Insurance Sector in Ireland. The Data Protection Commissioner has approved the Code under Section 13 of the Data Protection Acts.

The Code was prepared against a backdrop of significant public concern arising from media reports last year that personal information held by the Gardaí and by the Department of Social & Family Affairs was being routinely accessed by private investigators acting on behalf of insurance companies. This was confirmed by the Office's own investigations of insurance companies at the time. The Code is the latest stage in the response of the Office to those issues and follows the launch last year of a data protection code of practice for An Garda Síochána - <http://www.garda.ie/faq.html#C3> and the publication in recent weeks of an extensive data protection audit conducted in the Department of Social & Family Affairs in January of this year - <http://www.welfare.ie/press/pr08/pr310708.html>

The Code was the subject of extensive discussion with the Irish Insurance Federation and individual insurance companies. The Code provides a clear framework for insurance companies to process their customer data in accordance with the Data Protection Acts and will also act as an assessment tool for the examination of any complaints received by the Data Protection Commissioner in relation to the handling of personal data within the insurance sector.

Deputy Data Protection Commissioner, Gary Davis indicated that, *"We have made it a priority to bring this Code to a conclusion. The insurance sector holds extensive personal data, some of it extremely sensitive, on a large part of the population. I hope and expect that the publication of the Code will bring about improvements in data protection compliance in the insurance sector that benefits both the sector and the consumer. The Code clarifies how data protection rules apply specifically in the insurance sector making it simpler for the sector to meet its obligations in relation to its handling of personal information."*

He added, *"I expect that the Code will help consumers by removing some of the mystery of how their personal data is used in the insurance sector and thereby better informing them of what standards they should expect in this respect"*.

This Code provides, inter alia, for:

- improvements in information and options available to customers on the use of their personal data
- the use by insurers of only licensed private investigators and that they contractually engage the private investigator on the basis that the private investigator will comply with applicable Data Protection legislation
- specific periods for which customer data may be held and used

- the circumstances in which personal data may be shared with other bodies
- procedures for keeping data secure
- ensuring that only necessary information is sought by insurance companies

A copy of the Code is here – <http://www.complianceireland.com/Resources.html#DataProtection>

## **Institute of Chartered Accountants in Ireland investigating data security concerns (19 August 2008)**

According to the Irish Times (reporter John Collins, Tuesday 19 August 2008), contact details for more than 17,000 members of the Institute of Chartered Accountants in Ireland (ICAI) may have been inadvertently published on the internet. The Irish Times reports that the information includes members' personal addresses, contact details including e-mail addresses and phone numbers, and personal data such as date of birth. The file may have also included membership numbers and the temporary passwords allocated to members before their first log-in to the website.

It is understood that the error happened during a redesign of the ICAI's website in July. It is understood that the error was notified to the institute by a member on 5 August 2008.

A spokesperson for the ICAI reportedly stated that the incident was a result of "human error" and there had been no breach of the ICAI's internal computer systems. A copy of the letter sent to members of the ICAI from its chief executive Pat Costello reads *"Thus far, there has been no indication from the volume of activity on the website or from the nature of the queries we have received from individual members that there has been any unlawful use of the data,"*

The Irish Times reports that no financial details, such as credit card numbers or regulatory information, were released in error. The Data Protection Commissioner and the Information Commissioner's Office in UK have been informed about the incident.

See <http://www.irishtimes.com/newspaper/finance/2008/0819/1218868113806.html>

## **Loss of Department of Social and Family Affairs information held by the Office of the Comptroller and Auditor General (11 August 2008)**

According to newspapers the personal data of up to 300,000 persons has been lost by the Office of the Comptroller and Auditor General relating to clients of the Department of Social and Family Affairs (DSFA). A report on the matter was filed by the government departments involved in or around 4 August 2008.

On Sunday 17 August 2008, a number of Irish newspapers carried an advertisement placed by DSFA informing the public of the loss of the data.

Read more at [www.privacy.ie](http://www.privacy.ie)

## Compliance Ireland launches [www.privacy.ie](http://www.privacy.ie)

Following the success of our standalone specialist regulatory websites, [www.mifid.ie](http://www.mifid.ie) and [www.antimoneylaundering.ie](http://www.antimoneylaundering.ie) **Compliance Ireland** is pleased to announce the (soft) launch of [www.privacy.ie](http://www.privacy.ie).

Privacy and data protection are more than just hot topics. The use and treatment of personal data is one of the greatest challenges facing financial and non-financial firms in Ireland. Drawing upon our extensive data protection experience, we will use [www.privacy.ie](http://www.privacy.ie) to distribute data privacy resources, news and events in Ireland.

We believe that just like our specialist MiFID and Anti-Money Laundering websites, [www.privacy.ie](http://www.privacy.ie) will serve as a useful reference tool for those looking for information on this important topic in one easy to find (and to remember!) location.

The website is not being launched in blaze of glory but rather overtime will be built up with relevant data protection news and resources.

As usual, feedback and comments from our visitors will help shape the format and direction of the website.

## Our Services

**Compliance Ireland** is a management consultancy firm specialising in regulatory affairs for financial services and other regulated industries. We provide a wide range of consulting and training services:

- **Authorisation Applications** - project managing your authorisation application to the Financial Regulator.
- **Director Services** – provision of corporate governance specialists to act as non-executive directors for your management company, fund or securitisation vehicle.
- **Board Support Services** – assisting your fund boards to discharge their monitoring and oversight responsibilities over delegated service providers.
- **Risk Management Services** – assisting UCITS 3 fund boards to monitor and control the fund's exposures to Financial Derivative Instruments.
- **Compliance Support Services** – assisting your firm to meeting its initial regulatory compliance requirements and providing ongoing specialist advice and expertise.
- **Managing Regulatory Inspections** - assisting you to manage Financial Regulator regulatory inspections and desk audits.
- **Directors' and Senior Management coaching** - coaching your staff to quickly absorb updated regulatory requirements and expectations.
- **Compliance Manuals & Procedures** - drafting your business orientated compliance and operational procedures and manuals.
- **Anti-Money Laundering** - conducting assessments of your AML controls and systems, assisting you implement remedial action & drafting your AML policies and manuals.
- **Data Protection** - conducting assessments of your Data Protection controls and systems, preparing you for an inspection by the Data Protection Commissioner, assisting you to implement remedial action & drafting your Data Protection policies and manuals.
- **Health Checks** - performing pre-regulatory inspection audits of your business covering general Financial Regulation & Compliance.

Visit our other informative websites – [www.mifid.ie](http://www.mifid.ie), [www.antimoneylaundering.ie](http://www.antimoneylaundering.ie), [www.privacy.ie](http://www.privacy.ie) [www.compliancejobs.ie](http://www.compliancejobs.ie) and [www.complianceitraining.ie](http://www.complianceitraining.ie)

Compliance Ireland Regulatory Services Limited  
Lower Ground Floor, 13 Adelaide Road, Dublin 2

E-mail: [email@complianceireland.com](mailto:email@complianceireland.com)

Telephone: +353 1 425 5962 / 5962

[www.complianceireland.com](http://www.complianceireland.com)

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