



REGULATORY UPDATE 6/2008

This newsletter is available online at:

http://www.complianceireland.com/documents/CI_Newsletter_November08_web.pdf

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

Our group websites

Readers will be aware that we run specialist regulatory websites - www.antimoneylaundering.ie and www.mifid.ie. A little while ago we launched www.privacy.ie. Like our other websites, www.privacy.ie has proved quite a success and more content will be added to all these websites in the coming months. Take a moment to visit these sites for specialist information on the topics they cover. These sites complement the extensive data on www.complianceireland.com

- **Compliance Ireland** is pleased to announce the launch of 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 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 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.

New subject topics added to www.complianceireland.com

- New 'Interesting FSA Cases' section is added to our website at http://www.complianceireland.com/Resources.html#FSA_Dir_Cases.
- New 'Financial Services Ombudsman' section is added to our website at <http://www.complianceireland.com/Resources.html#FSO>

Data Protection presentation slides

Peter Oakes of **Compliance Ireland** delivered a paper to the Irish Computer Society together with Assistant Commissioner, Tony Delaney, Office of Data Protection Commissioner on Tuesday 18th November 2008. The topic covered was 'Dealing with Access Requests'. A copy of our paper may be downloaded from http://www.complianceireland.com/documents/CIRS_PresentationDP20081118_web.pdf. Feel free to visit 'Our Papers' section where you may download other useful information at <http://www.complianceireland.com/Resources.html#OurPapers>

Updates to our Press Page

The following Press articles, to which we have contributed since October 2008, have been uploaded at <http://www.complianceireland.com/Press.html>

- Irish Times, 31 October 2008 - *Warning over bogus credit union e-mail*
- Eircom (Breaking News), 30 October 2008 - *Warnings over credit union e-mail scam*
- Sunday Tribune, 26 October 2008 - *Why did Quinn agree the facts and penalties in Ireland's highest regulatory fine?*
- Sunday Independent, 5 October 2008 - *McDonald's more palatable bet than Irish Government*

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- [DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT \(FINANCIAL INSTITUTIONS\) \(FULL DAY\)](#)
9.00am to 5.00pm, Thursday 27th November 2008 (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

REGULATORY COMPLIANCE & AML/CFT TRAINING FOR MONEY TRANSFER FIRMS (FULL DAY)

9.30am to 12.30pm, Wednesday 3rd December 2008 (Camden Court Hotel, Camden Street, Dublin 2). Cost: €295 (no VAT)

ANTI MONEY LAUNDERING AND FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY)

9.00am to 5.00pm, Tuesday 9th December 2008 (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

Visit <http://www.complianceireland.com/Training.html> for more information

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Compliance Ireland

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COMPLIANCE IRELAND TRAINING

2008 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.complianceireland.com/Training.html>.

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.

CPD Credits/Hours: Our courses are accredited by the Institute of Bankers (QFA, CPD Members, LOCI (i.e. ACOI) and CeB) and Insurance Institute of Ireland (QFA, LOCI (i.e. ACOI), CIP and CPD 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) or your professional association if you have any queries on the amount of CPD hours that may be claimed for our courses.

Quarter 4 2008 training course dates

Full details of all NEW COURSES can be found at <http://www.complianceireland.com/Training.html> or <http://www.complianceireland.com/Training.html>. You can download the full training programme in adobe at http://www.complianceireland.com/documents/Q3andQ4TrainingProgramme_2008.pdf

All courses can be tailored for in-house delivery too. Please contact us at +353 1 425 5962 or visit our website for further information. Bookings can be made by email to bookings@complianceireland.com.

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

9.00am to 5.00pm, **Thursday 27th November 2008** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

- *"Excellent Day – Taking time out to think about & discuss the issues is very valuable. The day supported, confirmed, gave us confidence with our approach and gave us good pointers for data protection going forward"* (Bank – Data Protection attendee)

Webpage: <http://www.complianceireland.com/DP&Audit.html>

REGULATORY COMPLIANCE & AML/CFT TRAINING FOR MONEY TRANSFER FIRMS

9.30am to 12.30pm, **Wednesday 3rd December 2008** (Camden Court Hotel, Camden Street, Dublin 2). Cost: €295 (no VAT)

- Note – this course is aimed at money transmission businesses registered under Part V Central Bank Act 1997

Webpage: <http://www.complianceireland.com/seminars.html>

ANTI MONEY LAUNDERING AND FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY)

9.00am to 5.00pm, **Tuesday 9th December 2008** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)
"A very well presented course. A complex area that was approached logically. Obviously presenter knew the area extremely well and did not have to hide behind jargon or legislation. His ability to debate the issues was good also. The course was brought to life with real life examples."
(Attendee from the Irish Financial Regulator)

Webpage: <http://www.complianceireland.com/AMLDubFis.html>

ESTABLISHING THE INTERNAL AUDIT FUNCTION (HALF DAY)

9.00am to 1.00pm, [Date to be announced – send an email to email@complianceireland.com to be kept informed of next date] (Jurys Inn, IFSC, Custom House Quay, Dublin 1)
Cost: €425 (no VAT)

Webpage: <http://www.complianceireland.com/InternalAudit.html>

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FINANCIAL SERVICES – IRELAND

Financial Regulator inspections: Current inspections and completed inspections

The Financial Regulator's inspection of regulated firms continues. In our October 2008 Newsletter (see http://www.complianceireland.com/documents/CI_Newsletter_October08_web.pdf) we wrote on the regulator's findings following its inspection of MiFID firms.

In this Newsletter we write on the outcome of the Financial Regulator's inspections of Credit Institutions (complaints handling themed visits), Money Transmission Businesses (mystery shopping exercise) as well as three classes of inspections currently being undertaken relating to insurance companies, stockbrokers and themed anti-money laundering inspections.

Current inspections:

Insurance companies inspections:

We understand that a number of insurance companies have recently, and others will soon be, visited by the Financial Regulator. Ahead of these visits the Financial Regulator issues a comprehensive documentation request, seeking up to 50 (and in some cases more) documents from insurance companies. These visits focus upon Corporate Governance and Internal Controls and the results of these inspections feed into the Financial Regulator's risk-rating system.

Anti-Money Laundering themed inspections:

The Financial Regulator is currently undertaking anti-money laundering themed inspections of regulated firms. Ahead of these inspections, firms selected for a themed visit are being asked to have available on inspection day a copy of their AML procedures, details of their AML training programmes and a copy of the firms' client lists.

Stockbrokers

The Financial Regulator wrote to all Irish stockbroking firms in the first week of November 2008, requiring a special one-off audit of their books to be performed by their auditors. The review will involve both a procedural review and a substantial review of each firm's Risk Management and Internal Controls. In its communication to brokers, the Financial Regulator stressed that it is not requesting the firm's auditors to carry out a Client Asset Requirements audit.

[Editor - Compliance Ireland understands that auditors are expected to give the Financial Regulator an opinion on the effectiveness of the Risk Management and Controls operated by each firm: (i) ensuring that client assets are not being put at risk, inappropriately used or accessed; and (ii) ensuring that the controls surrounding trading activity is effective to prevent putting the firm's own funds at risk (i.e. resulting in the firm not having sufficient funds on an ongoing basis to meet its capital requirements). The letter sent to brokers is confidential and if you wish to read more on this point you will need to turn to media sources such as <http://archive.tcm.ie/businesspost/2008/11/16/ston3752a5d/>

If your firm is selected for a regulatory inspection and you require assistance preparing for the inspection please contact **Compliance Ireland** on +353 (0) 1 425 5962 / email@complianceireland.com. We have assisted many firms prepare for regulatory inspections ranging from banks, insurers, MiFID / Investment Intermediaries,

insurance/mortgage brokers, custodians, management companies and administrators and others.

Completed inspections - findings of examination into complaints handling procedures at Credit Institutions and mystery shopping exercise at Money Transmission Businesses

Credit Institutions – complaints handling

On Monday 24th November 2008, the Financial Regulator released details of the fact that it has written to all credit institutions highlighting certain issues relating to complaints handling procedures following a themed inspection.

The themed inspection assessed whether:

- (i) credit institutions' complaints handling procedures complied with the *Consumer Protection Code* requirements;
- (ii) examined how credit institutions were using the information and intelligence from complaints in their organisation.

Summary of findings

The Financial Regulator's overall findings from the inspection found that:

- credit institutions had procedures and controls in place to deal with complaints to comply with Code requirements.
- significant improvements in procedures were evident since the regulator's previous and wider examination of credit institutions conducted in 2004.
- significant improvements in the use of intelligence from complaints were also evident since the 2004 examination.
- it was particularly encouraging to note that some credit institutions had set shorter timeframes for dealing with complaints than laid down in the Code.

Issues identified and to be addressed by Credit Institutions

However the Financial Regulator's review did highlight a number of points which credit institutions (*Editor – plus other firms subject to the complaints handling procedures in the Code as well as MiFID firms*) must give regard to:

- Adequate records of complaints must be maintained. The inspection found that in some cases, comprehensive records of complaints were not always maintained.
- Credit institutions must inform complainants of their right to refer the complaint to the Financial Services Ombudsman. The Financial Regulator believes that this is not happening consistently at all credit institutions.
- Credit institutions must offer the customer the opportunity to have their verbal complaint treated as a written complaint. Some credit institutions did not always offer customers this opportunity.
- Complainants did not always receive written confirmation of the outcome of the credit institution's investigation. Credit institutions must notify

complainants in writing of the outcome of their investigations into the complaint.

- *All credit institutions have processes in place for obtaining management information from complainants. It is important that credit institutions use information from complainants in order to improve customer services and inform procedures and controls.*

The Financial Regulator's Consumer Director, Mary O'Dea commented that, "Credit institutions should ensure that customers are made aware of complaints procedures. Our research shows that 27% of consumers have no idea how to complain about a financial product or service, while only 46% have a good idea how to go about making such a complaint. This clearly indicates that customers are not sufficiently aware of their financial institution's complaints handling process. Credit institutions should not wait for customers to complain before providing information on the process, but should actively inform its customers of its complaints process, as a matter of course. Credit institutions should ensure that they are complying in full with the Code requirements at all times". Ms O'Dea advised consumers that where they are not satisfied with a product or service from any regulated entity that they should complain in the first instance to their product provider and if they are still dissatisfied, to the relevant ombudsman scheme.

Money Transmission Businesses – mystery shopping exercise

The Financial Regulator carried out a mystery shopping exercise of money transmission businesses to confirm that the businesses were imposing charges in accordance with the relevant legislation and to assess the transparency of charges imposed.

30 money transfers were undertaken to 12 countries and overall, the findings showed that while money transmission businesses were compliant with their approved charges there were issues in some firms regarding the transparency of such charges (the disclosure of charges and inadequate provision of information). Where issues were identified these were followed up with the relevant firm and it is intended that the exercise will be repeated in the future.

[Editor: In its Strategic Plan for 2008-2010 the Financial Regulator set a target of 8 themed inspections/mystery shopping exercises across various industry sectors for 2008]

Financial Regulator releases Regulatory Connection Issue 15 (25 November 2008)

The Financial Regulator released its latest Regulatory Connection newsletter on Tuesday 25th November 2008. The previous edition, Issue 14, was released in May 2008.

We have uploaded a copy of the Regulatory Connection onto our website where we store all previous editions on our Resources page at

<http://www.complianceireland.com/Resources.html#RegulatoryConnection>

Much of the news in the Regulatory Connection newsletter will have already been digested by those who follow closely the data uploaded onto the regulator's website. Many items in Regulatory Connection have also been picked up and commented upon by industry newsletters, including our own Newsletters (see <http://www.complianceireland.com/Newsletter.html>). However readers might wish to note the following interesting topics:

- page 2 - an informative note on the *Review of the Intermediary Market*.

- page 10 - useful hard to find information on updates on the EU Financial Services Programme.
- page 13 - International News on recent *Bank of International Settlements and Financial Stability Forum* developments.
- page 14 onwards - new funds and new firms authorised/regulated by the Financial Regulator.

Financial Services Ombudsman releases details of 21 significant findings made in the insurance area for period July - November 2008 (Tuesday 25th November 2008)

On Tuesday 25th November 2008, the day after the Financial Regulator released its findings on how credit institutions were implementing complaint handling procedures (see above), Mr Joe Meade, Financial Services Ombudsman, released details of 21 significant findings made in the insurance area between July to November 2008. Of these 21 complaints 11 were upheld and the other 10 rejected. Mr Meade's office will release its findings covering banking/credit institutions area in January 2009.

We have created a new section on www.complianceireland.com at <http://www.complianceireland.com/Resources.html#FSO> where details of all case studies issued by Mr Meade's office can be located. Alternatively view the same information at the Ombudsman's website at <http://www.financialombudsman.ie/>

Between July to November 2008, the Ombudsman made financial orders totalling approximately €715,000 in favour of complainants against the insurance sector.

In his press release Mr Meade noted that so far in 2008 some 5,200 (4,050 in 2007) complaints have been received. This represents an increase of 28%. Insurance companies remain the focus of consumers' dissatisfaction with 2,850 complaints lodged against the insurance sector (2,250 in 2007) versus 2,350 (1,800 in 2007) for credit institutions.

Complaints upheld by the Ombudsman include:

- €325,000 specified illness cover directed to be paid and application of Insurance Company's 'loss of independence' test criticised.
- €250,000 unsuitable investment in a geared property fund to be refunded
- Fall of €13,500 in €100,000 investment after one year merits an award of €3,000
- Reduction from 50% to 20% in no claims bonus for minor car damage caused by a 70 year old was too harsh; reduced to 5% for one year only
- Allegation of €35,000 Investment Bond fraud against a foreign broker merits payment of €25,000 by an Irish insurance company
- PRSA charging structure and complaint handling by Insurance Company was highly unsatisfactory - €14,000 compensation and premiums refunded
- Sale of €20,000 assurance policy did not meet sale guidelines - €5,000 award
- Permanent Health Insurance benefit confusion resolved and €91,000 arrears paid
- Personal Accident Benefit definition was not clear - 50% benefit to be paid
 - Travel Insurance
 - Definition of 'relative' / 'step-parent'; Ombudsman directs 75% refund of €1,100 claim
 - Cancellation of holiday due to pre-existing illness merits 50% award of Sigt1,500

Complaints upheld not include:

- Provider was entitled to alter impatient only medical insurance cover
- Medical Expenses Insurance and Pre-Existing Condition Waiting Period
- Investments
 - Daughter's €90,000 investment allegedly for 90 year old mother
 - SSA roll over
 - Proper notification to transfer funds was not given
 - Charges applied to investment bond were correct
 - Encashment value of policy could not be based on phone value
- Other private car insurance cover did not extend to commercial vehicles
- Travel insurance
 - Loss of money and valuables while mugged on holidays
 - Lost baggage complaint and delayed baggage issue

Financial Regulator issues amended guidance for securities covered by the Credit institutions (Financial Support) Scheme 2008

The Financial Regulator issued on Monday 24th November an amendment to *Guidance Note No. 6 - Covered liabilities issued under the Credit Institutions (Financial Support) Scheme 2008* previously issued on 7 November 2008. This amendment states that the Committee of European Securities Regulators is currently considering issuing guidance relating to the disclosure in documentation where debt securities are guaranteed by a Member State.

A copy of the Guidance Note is here
http://www.complianceireland.com/documents/Guidance_Note_No_6_Scheme2008.pdf. Any queries on the Guidance Note should be made to: markets@finreg.ie

Financial Regulator reviewing recording of telephone conversations and electronic communications involving client orders under MIFID Regulations

The Financial Regulator is considering introducing obligations on investment firms relating to the recording of telephone conversations or electronic communications involving client orders. A review is underway and the Regulator has written to investment firms asking them to complete a questionnaire on current practices and views on the introduction of rules.

If you receive the letter please note that completed questionnaires are to be returned to the Regulator by 24 November 2008.

Regulator requests risk reduction plans from six banks

The Irish Times reported on 24 October 2008 (Simon Carswell)¹ that Mary Burke, head of banking supervision in the Financial Regulator has written to the six Irish banks covered by the State's guarantee to submit new business plans showing how they plan to reduce their risks. The Regulator wants details of how the institutions will be run, showing how they would reduce future risks and comply with the scheme's targets.

The Regulator has also placed up to three "authorised officers" in each of the six institutions to scrutinise their future operations. The appointments are in addition to the new directors that the institutions must appoint who will represent the interest of the taxpayer.

¹ <http://www.irishtimes.com/news/page/finance/2008/1024/1224500285524.html>

The banks are preparing to submit formal "acceptance deeds" confirming their participation in the scheme. The six banks must agree to the annual cost of the scheme set out in the deeds received from the Department of Finance on Wednesday 22 October 2008.

Details have also emerged of the annual charges to some institutions. AIB will pay less than €130 million a year to participate, Bank of Ireland will pay in the region of €115 million a year, while EBS building society will pay less than €15 million a year.

Trial of Cork financial advisor accused of money laundering set for January 2009

The Irish Examiner reported on 29 October 2008 (Liam Heylin)² that the trial of Cork financial adviser Timothy Cunningham, accused of money laundering arising out of the investigation of the Northern Bank robbery has been set for January 2009 and may take up to 16 weeks.

The case has been adjourned until 13 November to resolve issues of disclosure.

Irish Funds Market opens to Chinese investors

On 23 October 2008 the Irish and Chinese regulatory authorities signed an agreement which will allow Chinese investors to invest in Irish domiciled funds - opening up Irish-managed and administered funds to one of the world's largest pools of private capital.

The Financial Regulator signed a Memorandum of Understanding with its Chinese counterparts, the China Securities Regulatory Commission (CSRC) and China Banking Regulatory Commission (CBRC), enabling Chinese investors to invest in Irish-domiciled, UCITS-compliant and non-UCITS, investment products for the first time.

Chinese investors are now able to access internationally distributed investment funds, domiciled and serviced in Ireland, through the Qualified Domestic Institutional Investor (QDII) regime.

Link to IFIA press release: http://www.irishfunds.ie/news_mou_china.htm

Irish Funds Industry - Q&A information note on Trustee/Custodian responsibilities

Following a recent meeting of the Industry Trustee Committee, the Irish Funds Industry has published a Q&A information note to address some of the more frequently asked questions on trustee/custodian responsibilities such as registration of assets, sub-custodian agreements, valuation of fund assets and suspension of fund redemptions.

[Editor: In the light of recent market events, it was interesting to note that the paper dealt with items such as credit risk and rights of parties in the event of bankruptcy or default by third parties. The Trustee Committee of the IFIA has taken the opportunity to clearly spell out the duties and obligations of the trustee and the manager where assets are passed outside of the trustee's custodial network, for example to a prime broker or to a third party deposit taking institution. While a number of these principles are long established, current market conditions have perhaps focussed attention on them to such an extent that the IFIA felt that restating these principles was useful if not necessary.]

Financial Regulator updates Guidance Note on UCITS

² <http://www.examiner.ie/irishexaminer/pages/story.aspx?qqq=ireland-cqom=ireland-cqqa=ireland-cqod=75996-gcpx=1.asp>

On 29 October 2008 the Financial Regulator clarified its calculation methodology on the use of Value at Risk ("VaR") in UCITS and issued updated guidance (Guidance Note 3/03, section 1.4). The purpose of the technical clarification is to allow greater flexibility in the quantitative parameters used (confidence level and holding period) while ensuring that existing limits to market risk are not compromised.

The Guidance Note now allows an absolute VaR limit of 20% with a 99% confidence level and a holding period of 20 days. Other parameters may be used but in such cases the VaR limit of 20% must be adjusted downwards in order that the 99% confidence level and 20 day holding period parameters are respected.

[Editor - For those unfamiliar with the VaR process the above adjustments may seem somewhat arcane. VaR is a statistically-derived estimate of the expected loss of fund NAV in a worst-case scenario. It is worth noting that the absolute VaR limit in the previous (April 2008) version of the Guidance Note was 5%, so this change represents a four-fold increase in the acceptable statistically-expected maximum catastrophic loss. The confidence level of 99% remains unchanged, meaning that any output must provide a 1% statistical risk of error. The holding period used for modelling the performance of the assets being measured has been shortened from one month to 20 days. A security with an observed holding period of 30 days is 22% more likely to breach a particular loss limit than one with an observed holding period of 20 days, simply because there is more time for adverse events to occur. Taken together, these changes would appear to represent a significant relaxation by the Financial Regulator of permissible fund volatility for UCITS funds which are sophisticated users of derivatives.]

Link to guidance note: <http://www.complianceireland.com/Resources.html#UCITSFunds>

Mortgage Lenders Must Act in Best Interest of Consumers

On Wednesday 22nd October 2008, the Consumer Director of the Financial Regulator (Mary O'Dea) warned that mortgage lenders must act in the best interests of their customers when providing advice on switching tracker mortgages to fixed or variable rate mortgages. Ms O'Dea stated "Mortgage lenders must make sure that they understand each consumer's individual needs and circumstances before recommending that any consumer switches from his or her current mortgage. Lenders must be able to demonstrate compliance with the statutory Consumer Protection Code. In particular any recommendation must be in the consumer's best interests and they must recommend a mortgage that is more suitable for the individual consumer than the tracker mortgage. Lenders should fully disclose the short, medium and long-term effects of switching to each consumer."

Ms O'Dea added stated that "lenders must be in a position to demonstrate how they have concluded that each individual consumer's tracker mortgage is no longer suitable for that consumer. Their assessments and recommendations must be consumer-focused and must be in the consumer's best interests."

Ms O'Dea's warning follows an exposé this year by RTE's Prime Time programme (10th July 2008) into lending and intermediary practices. The RTE programme was the subject of a complaint by Start Mortgages lodged with the Board of the Broadcasting Complaints Commission (BCC) which was decided recently and can be found in Decision No. [287/08](http://www.bcc.ie/decisions/oct_08_decisions.html) at http://www.bcc.ie/decisions/oct_08_decisions.html.

[Editor - Readers may recall an official investigation by the Data Protection Commissioner was undertaken in 2007 into allegations that mortgage brokers disclosed unlawfully to estate agents the amount a purchaser could borrow to finance his/her home. That investigation resulted not only in joint

action by the Commissioner and Financial Regulator but also with the Commissioner releasing a guidance note to mortgage intermediaries on handling of personal data.]

Enforcement Actions

- Settlement Agreement – Quinn Insurance Limited and Mr Sean Quinn, Senior: 24 October 2008
- Quinn Insurance Limited to pay a monetary penalty of €3,250,000; Chairman Sean Quinn, Senior to pay a monetary penalty of €200,000 and stepping down as Chairman**

On Friday 24 October 2008 the Financial Regulator announced that Quinn Insurance Limited (QIL) will pay a monetary penalty of €3,250,000 and Sean Quinn Senior will pay €200,000 over to the Financial Regulator for suspected breaches related to contraventions by QIL of its obligations under the Insurance Acts and Regulations, including failure to notify the Financial Regulator prior to providing loans to related companies. The Settlement Agreement states that Sean Quinn, Senior is stepping down as Chairman and as a Director and will be replaced as Chairman by James Quigley. The insurer has informed the Financial Regulator that no consequences have arisen for any of the firm's policyholders as a result of the suspected breaches. The Financial Regulator confirms that the parties cooperated without delay and that the matter is now closed.

A copy of the Settlement Agreement notice is available at:

<http://www.complianceireland.com/Resources.html#Enforcement>

[Editor - This is the largest monetary penalty paid by a firm over to the Financial Regulator since the establishment of the Financial Regulator in 2003 and, from our research, the highest monetary penalty paid over by any Irish regulated firm to date. The monetary penalty to be paid by Mr. Quinn is 10 ten times higher than the previous highest penalty paid by a director. Put simply the collective penalty is a watershed in Irish financial services and insurance regulatory enforcement. The Financial Regulator obviously felt that its case was sufficiently serious to warrant such penalties but would not elaborate further on the background to the penalties when contacted by us. The line and the seriousness of the matter may also be gauged by the fact that the total penalty is almost 40 times higher than the penalty against Fxco Stockbroking (the previous highest fine to date) for inadequate client money controls and 70 times higher than that levied against Irish Nationwide Building Society for a breach of the market integrity principle under the Consumer Protection Code. The Settlement Agreement follows Patrick Nearly's, CEO Financial Regulator, attendance before the Joint Oireachtas Committee on Economic Regulatory Affairs on 14 October 2008 where the regulator discussed the level of fines imposed upon credit institutions to date.

The Financial Regulator has sanctioned at least 8 firms and imposed monetary penalties of €3.65 million so far this year. €240,000 of these fines were levied against directors of the sanctioned firms.

The action of the Financial Regulator in the Quinn Insurance Limited case and other regulatory sanctions dealt out to date should be of immense concern to firms and directors personally. The Financial Regulator clearly has the resources and will power to proceed against firms, regardless of the industry in which they operate, appearing on its radar. Robust corporate governance and compliance procedures are essential to help prevent such failures. The Financial Regulator and its staff are obviously growing very confident in the strength of their cases. The firms which have agreed monetary penalties are, obviously, very confident that the regulator made an appropriate decision otherwise these firms would not have settled.

As reported by the Sunday Business Post on 26 October 2008 the increased focus on solvency in the insurance sector has resulted in the Financial Regulator now requesting that all the major insurance companies provide monthly solvency statements replacing the previous practice of providing them every three months to one year. For more comment on regulatory sanctions visit our Press Page at <http://www.complianceireland.com/Press.html>.

DATA PROTECTION - IRELAND

Data Protection presentation slides

Peter Oakes of **Compliance Ireland** delivered a paper to the Irish Computer Society together with Assistant Commissioner, Tony Delaney, Office of Data Protection Commissioner, on Tuesday 18th November 2008. The topic covered was 'Dealing with Access Requests'. A copy of our paper may be downloaded from http://www.complianceireland.com/documents/CIRS_PresentationDP20081118_web.pdf.

Feel free to visit Our Papers section where you may download other useful information at <http://www.complianceireland.com/Resources.html#OurPapers>

Oireachtas laptop stolen after break-in at TD's office

According to www.heart.ie (Tuesday 25th November 2008) Gardaí are investigating a burglary in which an Oireachtas laptop containing a significant amount of private information was stolen. The laptop was taken during a break-in at the Kildare constituency office of Labour TD Jack Wall. The paper reports that the theft has been reported to the Data Protection Commissioner. It is thought that the classified Oireachtas laptop contained a significant amount of constituency details and that the information had been encrypted.

This article also appears at www.privacy.ie

Financial Regulator's refusal to release documents rebuffed by European Commission

The *Sunday Independent* reported on 26 October 2008 (Shane Ross)³ that the whistleblower in the AIB overcharging case of 2004/5 has won a breakthrough in Europe. Eugene McErean formally internal auditor of AIB has been told by the European Commission that it is taking up as a formal complaint the Irish Financial Regulator's refusal to release information about a key meeting he held with Liam O'Reilly (the then CEO of the Financial Regulator). Mr. McErean insists the contested minutes will reveal that he warned the regulator of the systemic overcharging at AIB, but that it failed to investigate his claims. According to the press report the regulator claims that Mr McErean withdrew his allegations of AIB overcharging. This assertion is strenuously denied by Mr McErean.

The European Commission has prima facie found that the written record of the meeting attended by Mr McErean and Mr O'Reilly constitutes personal data and should be released to him. After the Regulator's refusal to release the documents, Mr McErean took his case to the Data Protection Commissioner and the Circuit Court, which found against him; but the European Commission has disagreed with the court's finding -- not only on the former auditor's right to the release of personal data, but it has also contradicted the decision that the identities of companies named at the meeting should be withheld.

Whether the Financial Regulator faces an uphill task in preventing the release of the minutes is open for debate. The *Sunday Independent* claims that complaints of this sort taken up by the European Commission have a 96 per cent success rate.

This article also appears at www.privacy.ie

³ <http://www.independent.ie/business/irishwhistleblower-wins-fight-round-of-aib-battle-1510454.html>

Expert group to review protection of personal data

The *Independent* reported on 31 October 2008 that Justice Minister Dermot Ahern is to set up an expert group to examine if legal changes are needed to provide greater protection for people's personal data.

The move follows concern about the increasing number of data breaches both in Ireland and abroad. The review group will be asked to advise on whether it should become compulsory for public and private bodies to report breaches and whether they should be fined if they fail to do so.

The press release on the website of the Department of Justice, Equality and Law Reform states that the review group will be chaired by Mr. Eddie O'Sullivan and will include the Data Protection Commissioner, Mr. Billy Hawkes. It is expected that the first meeting will take place in the coming weeks and the group's remit will also include a review of international/EU approaches.

This article also appears at www.privacy.ie

Bank of Ireland customer data on missing device

The *Independent* reported on 4th November 2008 (Allison Bray)⁴ that the personal details of close to a thousand Bank of Ireland customers have gone missing after an employee wrongfully copied them on to a computer memory device which was subsequently lost. Bank spokeswoman Anne Matthews has said that both Bank of Ireland and the Data Protection Commission have launched separate investigations into the matter after the USB memory device was reported lost last Wednesday. The newspaper reports the bank as saying that most of the 894 customers affected have already been contacted by the bank but stressed that the material that was copied on to the memory device was not financially sensitive.

This article also appears at www.privacy.ie

Garda Commissioner requests mobile phone firm to retain web-browsing data

The *Irish Times* reported on 7th November 2008 (Karlin Lillington)⁵ that Vodafone - the largest mobile service provider in the State - had received a letter from the Garda Commissioner requesting that detailed information on the web pages people view be retained for possible future criminal investigations.

The request for real-time web-browsing information - the content or the web address (URL) of every web page browsed by users of mobile handsets, palmtop devices or 3G modems - goes beyond the European Union's data retention directive, which the Government intends to implement as a statutory instrument. Such a measure would cover the content of web-based email. "The directive does not pertain to the retention of content, and this would be very concerning," said Deputy Data Protection Commissioner Gary Davis.

This article also appears at www.privacy.ie

⁴ <http://www.independent.ie/national-news/new-bank-blunder-as-customer-details-oc-missing-1520088.html>

⁵ <http://www.irishtimes.com/newspaper/frontpage/2008/11/07/1225925540654.html>

FINANCIAL SERVICES – UNITED KINGDOM

FSA announces 'death knell' for commission driven sales

The Financial Services Authority is seeking to end the practice of life assurers and fund managers using upfront commissions to boost sales. The sweeping changes were announced on Tuesday 25th November 2008 in the FSA's *Retail Distribution Review* at <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/139.shtml>. The FSA's proposals are aimed at establishing a new level of consumer trust and confidence and represent a sweeping overhaul of the way long-term savings products are sold.

According to the Financial Times (26th November 2008) Amanda Bowe (who led the review) stated "We are absolutely clear. This is the end of commission as we know it". The Financial Times also reported that Andrew Fisher, chief executive of independent financial adviser Towry Law, saying that the FSA had "banned commissions implicitly". It should be noted that the FSA has not proposed an outright ban on commission driven sales.

Under the proposals, which the FSA plans to implement by the end of 2012, independent advisers will be required to agree a charge for their services with customers before they select any products for them. This would replace the current system, where the adviser's remuneration is set by the life assurer or fund manager providing the product. Critics argue the practice encourages advisers to sell products that pay the highest commissions.

(Editor - In Ireland we have seen the establishment of intermediaries which charge an upfront fee, rather than a commission. Irish intermediaries will no doubt watch signaling from the Financial Regulator to see whether it may adopt similar proposals to that of the FSA.)

FSA ENFORCEMENT ACTIONS

Below is a selection of enforcement decisions issued by the United Kingdom from 9th October 2008 to 20th November 2008. A full list of all enforcement actions taken by the FSA is located at <http://www.fsa.gov.uk/Pages/Library/Communication/Notices/Final>

FSA FINES DERRICK HALES FINANCIAL PLANNING "DHFP" €10,500 FOR BREACHES OF TWO FSA'S PRINCIPLES FOR BUSINESSES AND FSA RULES & WITHDRAWS APPROVAL FOR TWO PARTNERS

On 09 October 2008 the FSA fined DHFP €10,500 for failings in DHFP's advice and sales processes in respect of Geared Traded Endowment Policies ("GTEPs") which resulted in customers being advised to purchase GTEPs in default of evidence that such sales were suitable. The FSA has also withdrawn the approval of Mr. Derrick Hales to perform the compliance and money laundering functions and the approval of Mrs. Kathleen Hales to act as Partner.

Link to final notices:

http://www.fsa.gov.uk/pubs/final/nales_09oct08.pdf
http://www.fsa.gov.uk/pubs/final/k_hales_final_09oct08.pdf
http://www.fsa.gov.uk/pubs/final/nales_final_09oct08.pdf

FSA FINES TWO DIRECTORS FROM ABBEY MORTGAGES

On 14 October 2008 the FSA decided to issue a public censure about Abbey in respect of breaches of the FSA's principles for business and related FSA rules between January 2006 and April 2008 and fined Directors Mr William John Evans and Mr Gary William Howes £30,000 each for breaches of the FSA's Statements of Principle for Approved Persons.

The FSA concluded that during the relevant period, Abbey failed to take reasonable care to ensure the suitability of advice given to customers; and failed to take reasonable care to organise and control its affairs responsibly and effectively in respect of its procedures for handling complaints and its compliance arrangements. These breaches relate to the operation of Abbey's self-certified mortgage sales process.

Link to press release: <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/118.shtml>

Link to final notices:

http://www.fsa.gov.uk/pubs/final/abbey_mortgages.pdf
http://www.fsa.gov.uk/pubs/final/william_evans.pdf
http://www.fsa.gov.uk/pubs/final/gary_howes.pdf

FSA FINES ORCHID FINANCIAL LIMITED £34,500

On 14 October 2008 the FSA fined Orchid Financial £34,500 for breaches of the FSA's principles for business between October 2005 and March 2008 in relation to advised sales of regulated mortgages.

The FSA decided that Orchid Financial failed to take reasonable care to ensure the suitability of its advice and as a result it had exposed over 900 customers to an unacceptable risk of buying mortgages that were unsuitable for them.

Link to final notice:

http://www.fsa.gov.uk/pubs/final/Orchid_financial.pdf

FSA FINES FIRM AND MLRO FOR INADEQUATE AML SYSTEMS AND CONTROLS

On 29 October 2008, the UK FSA fined both Syndicatum Holdings Limited (SHL) £49,000 (Euro 62,450 / USD 80,650 / AUD 118,400) and its money laundering reporting officer (MLRO), Michael Wheelhouse, £17,500 (Euro 22,300 / USD 28,800 / AUD 42,300) for not having adequate anti-money laundering systems and controls in place for verifying and recording clients' identities. This is the first time the FSA has fined a money laundering reporting officer.

The FSA found a number of failings including:

- the firm failed to implement adequate procedures for verifying the identity of its clients;
- it failed to verify adequately the identity of a significant number of its clients
- it failed to keep adequate records with regard to the verification of the identity of its clients; and
- Mr Wheelhouse failed to take reasonable steps to implement adequate procedures for controlling money laundering risk.

Read more:

http://www.complianceireland.com/documents/UK_FSA_fines_MLRO_20081029_Final.pdf

Link to final notices:

<http://www.fsa.gov.uk/pubs/final/sindicatum.pdf>
<http://www.fsa.gov.uk/pubs/final/m-wheelhouse.pdf>

FSA FINES AWD CHASE DE VERE WEALTH MANAGEMENT LIMITED £1.12 MILLION FOR MIS-SELLING

On 10 November 2008 the FSA fined AWD Chase de Vere Wealth Management Ltd. £1.12 million for serious failings in its pension transfer, pension annuity and income withdrawal business that resulted in mis-selling. The FSA found that the firm mis-sold some pension transfers and pension annuities by recommending products to customers who already had adequate existing pension provisions or whose attitude to risk did not match the products recommended to them, for example. The firm has estimated that as many as 800 of its customers may have received unsuitable advice in relation to 1,200 sales between February 2006 and October 2007.

Link to final notice:

<http://www.fsa.gov.uk/pubs/final/awd.pdf>

FSA BANS DIRECTOR PETER KING AND HIS FIRM NEW FOREST MORTGAGE COMPANY LTD

On 10 November 2008 the FSA banned Peter King and his firm New Forest Mortgage Company Ltd. for knowingly submitting applications for fraudulent life assurance policies. The FSA found that, since June 2007, King submitted applications for 39 fraudulent life assurance policies – 30 of which were in the names of applicants whose personal details were either wrong or who knew nothing about the applications – in order to benefit from commission payments in excess of £250,000. King admitted that his plan was to submit the policies, claim the commission and use the money to settle substantial outstanding debts.

A substantial fine would have been imposed on King in addition to the ban to reflect the seriousness of the case but for the fact that King is now bankrupt and unable to pay a fine.

Link to final notices:

http://www.fsa.gov.uk/pubs/final/new_forest.pdf
http://www.fsa.gov.uk/pubs/final/peter_king.pdf

FSA FINES FORMER UK AMBASSADOR AND BELGIAN BUSINESSMAN FOR MARKET ABUSE

On 12 November 2008 the FSA has fined Mr Richard Ralph, the former British ambassador to Peru and the former executive chairman of AIM-listed mining company, Monterrico Metals Plc (Monterrico), £117,691.41 and his friend Mr Filip Boyen £81,982.95 for dealing in Monterrico's shares on the basis of inside information.

On about 28 January 2007, Mr Ralph asked Mr Boyen to buy £30,000 worth of Monterrico shares on his behalf. At this time a takeover offer had been agreed in principle at a considerable premium to the existing share price. Although it was publicly known that the company was in takeover discussions the details of those discussions were confidential and highly sensitive. Mr Ralph was actively involved in the takeover discussions and knew he was not allowed to deal in the company's shares. Mr Ralph asked Mr Boyen to buy the shares to hide the fact that he was dealing and in doing so recklessly disclosed inside information to Mr Boyen about his intention to deal.

Link to final notices:

http://www.fsa.gov.uk/pubs/final/richard_ralph.pdf
http://www.fsa.gov.uk/pubs/final/filip_boyen.pdf

INSURANCE DIRECTORS BANNED FOR FAILING TO ENSURE FIRM COMPLIED WITH CLIENT MONEY RULES

On 17 November 2008 the FSA banned two directors of an insurance broker for failing to ensure that their firm complied with FSA client money rules. Roger Muse and his son Daniel Muse are prohibited for three years from performing any significant influence functions at firms carrying out regulated financial activities. The order will prevent them from running or managing a regulated business whether as sole traders, employees or appointed representatives of another firm.

Link to final notices:

http://www.fsa.gov.uk/pubs/final/Daniel_Muse.pdf
http://www.fsa.gov.uk/pubs/final/Roger_Muse.pdf

INSURANCE AGENTS BANNED FOR ILLEGAL TRADING

On 20 November 2008 the FSA banned Stephen Fryett and Richard Baines from performing any role in relation to regulated financial services activities. Mr Fryett acted as a Director of CIC Greece and was also involved in CIC Costa Rica, both of which were not authorised to carry out insurance business in the UK. Despite knowing this he encouraged a number of UK insurance brokers and underwriting agents to issue insurance contracts. Insureyourshop.com Limited, run by Richard Baines, was one of those insurance brokers and it issued approximately 1800 insurance contracts, including employer's liability insurance, purportedly underwritten by CIC Greece or CIC Costa Rica. Mr Baines was the Director of Insureyourshop.com Limited and also issued CIC policies to UK businesses while knowing that CIC Greece and CIC Costa Rica were not authorised.

Link to final notices:

http://www.fsa.gov.uk/pubs/final/richard_baines.pdf
http://www.fsa.gov.uk/pubs/final/stephen_fryett.pdf

PERMISSIONS TO CARRY ON REGULATED ACTIVITIES WITHDRAWN

The following entities have had their permissions to carry on regulated activities withdrawn:

DELROY ANGLIN

Link to final notice:

http://www.fsa.gov.uk/pubs/final/delroy_anglin.pdf

LUCKY ALBERT TRADING AS ECONOMIC MORTGAGES

Link to final notice:

http://www.fsa.gov.uk/pubs/final/lucky_albert.pdf

PAUL WARNER

Link to final notice:

http://www.fsa.gov.uk/pubs/final/paul_warner.pdf

IDEAL INSURANCE SERVICES LIMITED & BROKER BANNED

Link to final notices:

http://www.fsa.gov.uk/pubs/final/ideal_insurance.pdf

http://www.fsa.gov.uk/pubs/final/neil_mckay.pdf

REGINALD WAPLING TRADING AS BOWER INSURANCE CONSULTANTS

Link to final notice:

http://www.fsa.gov.uk/pubs/final/reginald_wapling.pdf

HOMEPLAN FINANCE UK LIMITED & TWO DIRECTORS BANNED

Link to final notices:

<http://www.fsa.gov.uk/pubs/final/homeplan.pdf>

http://www.fsa.gov.uk/pubs/final/edward_allen.pdf

http://www.fsa.gov.uk/pubs/final/ronald_allen.pdf

XCAVEO LIMITED

Link to final notice:

<http://www.fsa.gov.uk/pubs/final/xcaveo.pdf>

ACCEPTED 4 CREDIT LIMITED

Link to final notice:

<http://www.fsa.gov.uk/pubs/final/accepted4credit.pdf>

RUHKSANA MALIK, TRADING AS GREENACRE

Link to final notice:

<http://www.fsa.gov.uk/pubs/final/greenacre.pdf>

GLOBAL MORTGAGE LINK LIMITED

Link to final notice:

http://www.fsa.gov.uk/pubs/final/global_mortgage.pdf

SALMAN AHMED KHAN TRADING AS SALMAN A KHAN

Link to final notice:

http://www.fsa.gov.uk/pubs/final/salman_khan.pdf

HM Treasury warns of threats to the integrity of the international financial system

The Financial Action Task Force (FATF) published a statement on 16th October 2008 warning of the higher risks of money laundering and terrorist financing posed by weaknesses in anti-money laundering and counter-terrorist financing systems in Iran, Uzbekistan, Turkmenistan, Pakistan, Sao Tome and Northern Cyprus.

On 20th October 2008 HM Treasury published a press release agreeing with FATF's assessments and warning all firms authorised by FSA to take this advice into account in considering the systems and controls they have in place to counter financial crime, and to take appropriate steps to minimise the financial crime risks associated with transactions related to these jurisdictions.

Link to press release:

http://www.hm-treasury.gov.uk/press_107_08.htm

FSA letter to CEO's re remuneration policies

On 13th October 2008 the FSA published a "Dear CEO" letter on inappropriate remuneration schemes. The letter stated that the FSA shared concerns that inappropriate remuneration schemes, particularly but not exclusively in the areas of investment banking and trading, may have contributed to the present market crisis.

The letter stated that it appeared that in many cases the remuneration structures of firms may have been inconsistent with sound risk management and it was possible that they frequently gave incentives to staff to pursue risky policies, undermining the impact of systems designed to control risk.

The letter then went on to outline criteria for "good" and "bad" remuneration policies and that the FSA would visit all recipients of the letter by year end to gather more specific information about remuneration practices in firms to assure that bad practices are not present.

Link to copy of letter:

http://www.fsa.gov.uk/pubs/ceo/ceo_letter_13oct08.pdf

[Editor – Under the Irish bank guarantee scheme, the pay and bonuses of executives will be overseen by the Covered Institution Remuneration Oversight Committee (CIROC). Each covered institution is to submit a report to CIROC no later than six weeks after the institution joins the scheme outlining remuneration policies for the year ahead that comply with the objectives of the law. The scheme states that "Bonuses shall be measurably linked to reductions in guarantee charges, reduction in excessive risk taking and encouraging the long term sustainability of the covered institution." Now won't this make interesting reading!]

HM Treasury issues guidance on restrictive measures against Iran

On 12th November 2008 the UK Treasury issued guidance to firms about how they should implement EU Regulation 437/2007, as amended by EU Regulation 1110/2008 (which came into force on 12th November 2008)

Council Regulation (EC) No 423/2007 has been amended to implement within the EU the vigilance requirements in United Nations Security Council Resolution (UNSCR) 1803, which was adopted on 3rd March 2008 because of international concern about Iran's nuclear development programme.

UNSCR 1803 calls upon all states to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran and their branches and subsidiaries abroad, in particular with Bank Melli and Bank Saderat, in order to avoid such activities contributing to the proliferation-sensitive nuclear activities or the development of nuclear-weapon delivery systems referred to in UNSCR 1737.

Link to guidance:

http://www.hm-treasury.gov.uk/iran_regional_guidance_111108.pdf

FINANCIAL SERVICES – EUROPE

Commission proposes revision of bank capital requirements rules to reinforce financial stability

The European Commission has put forward a revision of EU rules on capital requirements for banks that is designed to reinforce the stability of the financial system, reduce risk exposure and improve supervision of banks that operate in more than one EU country.

Under the new rules, banks will be restricted in lending beyond a certain limit to any one party, while national supervisory authorities will have a better overview of the activities of cross-border banking groups. The proposal, which amends the existing Capital Requirements Directives, reflects extensive consultation with international partners, Member States and industry. It now passes to the European Parliament and the Council of Ministers for consideration.

Internal Market and Services Commissioner Charlie McCreevy said: "These new rules will fundamentally strengthen the regulatory framework for EU banks and the financial system. I believe that they are a sensible and proportionate response to the financial turmoil we are experiencing. Basic rigour, transparency and prudence are key to a healthy and stable banking system."

The proposed amendments include restricting banks lending beyond a certain limit to any one party establishing colleges of supervisors for banking groups that operate in multiple EU countries, clear EU-wide criteria for assessing whether 'hybrid' capital, i.e. including both equity and debt, is eligible to be counted as part of a bank's overall capital, improving liquidity risk management and risk management for securitised products.

Link to press release:

http://ec.europa.eu/ireland/press_office/news_of_the_day/capital-requirements-directive_en.htm

EU commission takes legal action against Ireland, Spain, Belgium and Sweden to ensure AML/CFT compliance

The European Commission has decided to refer Belgium, Ireland, Spain and Sweden to the European Court of Justice over non-implementation of the 3rd Anti-Money Laundering Directive. The transposition deadline for the Directive was 15th December 2007.

The latest information on infringement proceedings concerning all Member States can be found at:

http://ec.europa.eu/community_law/index_en.htm

[Editor - As to Ireland's implementation of the proposed Criminal Justice (Money Laundering) Act 2008, one would be very game to bet a passing date in 2008. Compliance Ireland understands that the new law is a top priority for the Irish government. We also understand that the Financial Regulator is very keen to adopt its new functions to supervise and enforce AML/CFT standards on those it regulates (see above for details of the current themed AML inspections being carried out by the regulator). So while work continues on the drafting of the new Bill, all we can do is to continue to refine our procedures in anticipation of a 2009 implementation date. However any firm deciding to put off designing its AML/CFT risk-based architecture until 2009 is likely to cause itself significant problems. This type of work can take many months of planning, agreeing with boards and implementing. If the law is passed in early 2009, we should only expect a short lead-in time followed by a round of regulatory inspections soon thereafter.]

European Commission publishes updated MIFID Q&A

A copy of the updated document (dated 31st October 2008) is available here: http://ec.europa.eu/internal_market/securities/docs/fsd/questions/questiors_en.pdf

CESR assessment on the impact and functioning of MIFID

On 3rd November 2008 CESR published two Calls for Evidence – one on the impact that MIFID has had on secondary markets functioning and a further Call for Evidence on the scope of MIFID's transaction reporting obligations. CESR also announced it has updated its transaction reporting exchange mechanism (TREM) improving further the exchange of information amongst supervisors.

Link to press release:

<http://www.cesr.eu/popup2.php?id=5371>

More rogue traders at Caisse d'Epargne and Citic Pacific

French police are questioning a trader over his involvement in a derivatives deal that cost banking giant Caisse d'Epargne \$600m. The bank's top three executives have all resigned since the loss came to light in October. Chief executive Charles Milhaud stood down after saying he accepted full responsibility for the lost cash and is expected to leave without a pay-off. The bank's director general and chief financial officer have also resigned.

Citic Pacific, the Hong Kong-listed arm of China International Trust and Investment Corp, has reported that it has potential foreign exchange losses of about \$2bn after traders made what the company said were unauthorised one-way bets against the US currency. The group finance director and group financial controller have resigned over the losses.

These losses follow the €4.9bn loss at France's Societe Generale earlier this year.

[Editor - see page 6 of our July 2008 Newsletter where we wrote about the Financial Regulator contacting banks and investment firms reminding of appropriate Risk Management and Internal Controls and seeking their confirmation that any remedial action required at their firm is implemented. See http://www.complianceireland.com/documents/CI_Newsletter_July08.pdf]

CESR's advice to European Commission on the UCITS Management Company Passport

On 31st October 2008 CESR delivered its response to the European Commission's request for assistance on the supervisory issues which would arise in the event that a UCITS was managed by a management company situated in another Member State (the management company passport).

CESR's advice covered the following areas:

- domicile and authorisation of the management company, the UCITS and the depository
- applicable law and supervisory responsibilities
- authorisation procedure for UCITS funds whose management company is established in another Member State
- on-going supervision of the management of the fund

A number of CESR members (including Ireland) have voted against CESR's advice to the Commission on the basis that the advice would not put in place a sound supervisory framework and that there would be an adverse impact on investor protection.

Link to press release:

<http://www.cesr.eu/dopup2.php?id=5366>

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, www.anti-money-laundering.ie, www.privacy.ie, www.compliancejobs.ie and www.compliancetraining.ie

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This document will be replaced by our November Newsletter. Both this document and the November 2008 Newsletter is online at:
http://www.complianceireland.com/documents/CI_Newsletter_November08_web.pdf

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