



REGULATORY UPDATE

Welcome to the May 2007 (No. 2/2007) regulatory update from Compliance Ireland.

IRELAND

Market in Financial Instruments Directive [MiFID]

The Markets in Financial Instruments and Miscellaneous Provisions Bill 2007 has been published ('MiFD Bill').

While the MiFID Directive was transposed by Statutory Instrument [S.I. No. 60 of 2007] on 15 February 2007 ('MiFID Regulations'), some complementary measures (for instance, to provide for significant penalties on foot of conviction on indictment) require primary legislation.

A copy of the MiFID Bill is also being availed of to make a range of largely technical amendments to various Acts, including Acts concerning the National Treasury Management Agency, Financial Regulator, Financial Services Ombudsman, Ministerial pensions and credit unions.

The MiFID Bill provides for the repeal of the Stock Exchange Act 1995 as its provisions have been overtaken by the MiFID reforms. The MiFID Bill provides for penalties for conviction on indictment under the MiFID Regulations. The MiFID Bill also provides for a range of amendments to various acts including the

Central Bank Act 1942 and the Netting of Financial Contracts Act 1995.

The MiFID Regulations and the MiFID Bill may be downloaded from our MiFID dedicated website, www.mifid.ie, which has been updated to include all key documents published by the Financial Regulator, e.g. investment activities and services and investment instrument mapping documents.

All firms authorised under the Investment Intermediaries Act 1995 received a letter from the Financial Regulator around 14 March containing MiFID mapping documents covering MiFID services and activities, as well as financial instruments. The Financial Regulator stressed that it is important for firms to review the mapping documents and should a change of authorisation be desired, the application for change should be submitted to the Financial Regulator by 1 June 2007. Compliance Ireland is currently assisting firms to review their current authorisations. If you would like further information on this service please contact us at the details below.

Credit Union Regulations

The Department of Finance published the Credit Union Act 1997 (Alteration of Financial Limits) Regulations 2007 [S.I. No. 193 of 2007] on 26 March.

These Regulations extend the percentage of a Credit Union's assets that may be loaned for a period in excess of five years to 40% of total loans, and assets that may be loaned for a period in excess of ten years to 15% of total loans. In both instances, the explicit permission of the Financial Regulator is required to exceed the pre-existing limits of 20% and 10% respectively.

Consumer Protection Code – full implementation (no exceptions)

On 27 April 2007 the Financial Regulator, in a letter written to all regulated firms and persons, confirmed that **1 July 2007** is the full implementation date for the Consumer Protection Code. Following the Financial Regulator's letter one representative body was reported to have stated that consumers should not expect each and every aspect of the code to be in place by July 1st.

Compliance Ireland thereafter contacted the Financial Regulator to obtain a clear answer to the question of the implementation date. In response to our question, the Financial Regulator *“categorically confirmed that the code takes full effect on and from 1 July 2007 and that consumers are entitled to all rights under the code on and from 1 July without exception. The six month period referred to in Ms O'Dea's letter applies to the Financial Regulator's monitoring of compliance with the code. In this period, issues relating to systems development or staff training will be taken into account when determining whether enforcement actions are necessary”*.

Separately, readers may have seen the Financial Regulator's recent advertisements recruiting Solicitors (to undertake administrative sanction inquiries) and an Insurance Regulator for the Consumer Protection Code department.

It is that clear that the Financial Regulator is gearing up to actively monitor and enforce the Code. Compliance Ireland has prepared a matrix which firms can use to commence their assessment of how the Code will affect their business. If you would like further information on this service please contact us at the details below.

Capital Requirements Directive

The Capital Requirements Directive (“CRD”) entered force in Ireland on 1 January 2007 with the commencement of the relevant regulations. Affected firms may cut over to the new regime at any stage during 2007, but must be in compliance with the new rules by 31 December 2007.

The CRD is actually two directives - Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of same date on the capital adequacy of investment firms and credit institutions.

Directive 2006/48/EC updates EU banking legislation for the provisions of the Basel II Framework. This significantly changes the way in which risk capital is calculated for both banks and non-banks representing a major change for investment firms regulated under the Investment Intermediaries Act 1995 as historically, the regulation of banks and non-banks have been rigorously separated. Under the new regime, the regulations are intermingled on the basis that the same types of risks should carry the same capital requirements regardless of the form of the firm carrying the risk.

The Basel Framework, to which the CRD is linked, is based on three 'pillars':

- Pillar 1: quantification of the risks arising from financial firms' trading and credit business – standard, foundation or advanced;
- Pillar 2: A supervisory review process where firms internally assess the risks they run by firms and estimate the level of capital needed to support them.

- This internal estimate is then checked by supervisors; and
- Pillar 3: increased public disclosure by firms to enhance market discipline.

Directive 2006/49/EC recasts the much-amended Capital Adequacy Directive as a single document and ensures that its provisions dovetail with those of the Market in Financial Instruments Directive (www.mifid.ie) - so the two will sit comfortably alongside one another when the MiFID comes into force in November 2007 (S.I. No 60 of 2007 published February 2007).

This bifurcation carries through into the introducing Irish legislation. Directive 2006/49/EC was introduced into Irish law as the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 [S.I.660 of 2006] and Directive 2006/49/EC was introduced into Irish law as the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 [S.I.661 of 2006]. Again there is a degree of cross-referral between the Statutory Instruments, so the documents need to be read in together.

For the majority of small firms with a limited scope of activities, the CRD will not significantly impact on their regulatory capital requirement as they will continue to be required to hold the higher of the minimum level of capital per their authorisation or the amount as calculated under the Expenditure Based Requirement. However, firms which conduct trading activities and/or which carry credit risk will be required to calculate their capital requirement per the new CRD requirements.

The CRD also introduces, for the first time, a specific capital charge for firms in respect of operational risk. For smaller firms, the CRD permits competent authorities to exempt these firms from this operational risk capital charge. It is proposed that the (Irish) Financial Regulator will exercise this exemption under the National Discretions and it will be granted automatically to those firms which comply with the criteria noted in the Article 20 of Directive 2006/49/EC. Firms should consider if they may avail of this exemption. For those firms who cannot avail of the exemption they will be subject to the operational risk capital charge in addition to their current capital requirement covering market, counterparty foreign exchange, position and non-trading book risks, etc.

Data Protection

The Data Protection Commissioner's 18th Annual Report was published on 16 May 2007. The list of case studies includes telecommunication firms engaging in unsolicited marketing campaigns to individuals. The report continues the theme of direct marketing by examining the practices of a television channel and a computer manufacturer. Access request requirements are another hot topic in the Annual Report with the Commissioner finding that private firms as well as public bodies failed to comply with access request requirements. Information stored on a central registry is also dealt with in the report, together with an interesting case study about the publication of minutes of council meetings on the internet.

Data Protection and Anti-Money Laundering

One very interesting and important case study for designated bodies is that of

Ulster Bank which deals with the collection of personal information considered excessive in the circumstances, notwithstanding an argument that documents were sought pursuant to Irish Anti-Money Laundering laws (Case Study 15/2006). Readers may feel a sense of *Deja Vu* here and not surprisingly because the same topic was reported on by the Commissioner in Case Study 7/2005 involving Allied Irish Banks. Compliance Ireland will examine this topic and other aspects of the Commissioner's report in our next newsletter.

Other firms regulated by the Financial Regulator were the subject of negative comments by the Commissioner in the 2006 Annual Report. In particular inspections of mortgage brokers were carried out by the Commissioner and 1,633 brokers were written to with formal guidance on how to conduct their affairs, policies and procedures in respect of customers' personal data and their data protection rights. The Commissioner's key message here is that personal data can only be disclosed in a way compatible with the purpose for which it was initially given. The Commissioner found numerous examples of personal data being passed from mortgage brokers to real estate agents without the consent of the customer including information which was highly confidential to the customer.

If you would like further information on our data protection services please contact at the address details below. We have and continue to assist a number of firms subject to inspections by the Commissioner including responses to the Commissioner, designing remedial action programmes (including data protection advice and audits) and in-house training

courses. We deliver data protection and audit training to financial and other firms on a regular basis at public training courses. See our website for more information on upcoming training dates for data protection and other training courses.

EUROPE

New EU Directive on Eligible Assets for UCITS

The EU Commission adopted Commission Directive 2007/16/EC (the Eligible Assets Directive) on 19 March 2007 which enunciates criteria for assessing whether different types of financial instruments are eligible for inclusion in UCITS funds. This measure will help to remove uncertainty as to whether UCITS can properly invest in various financial instruments. The Directive must be implemented into national law by 23 March 2008.

Proposed Amendments to UCITS Regime 2

Following on from the DG Markt working Document '*Initial Orientations of Possible Adjustments to UCITS Directive*' and public hearings in Brussels on 26 April, the Committee of European Securities Regulators [CESR] has been requested by the European Commission to on the form and content of the Key Investor Information with which it is proposed to replace the Simplified Prospectus. CESR have published a call for evidence [CESR/07-241] regarding the proposed replacement of the Simplified Prospectus with Key Investor Information documents.

The current content and format of the Simplified Prospectus is considered by the European Commission not to have

achieved its initial objectives, since documents are often overly long and technical, and difficult for the average investor to understand and use. The consistency of the information contained within Simplified Prospectuses has been questioned, making it harder for consumers to compare between funds, particularly where cross-border sales are involved. The full Prospectus is also considered to be too long and technical for the average investor.

Replacement of the Simplified Prospectus with a more meaningful document has been identified by the DG Markt as a key priority for 2007. CESR is in particular inviting comment from retail consumers as part of a parallel consultation [CESR/07-214].

CESR is also seeking information from industry bodies [CESR/07-205] about the way in which UCITS funds are distributed, and the types of intermediation that may exist in the relationship between the UCITS provider and the end investor.

NEW DATES FOR TRAINING COURSES ANNOUNCED

New dates for training courses, seminars and workshops covering the following topics have been announced at

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

- AML
- MiFID
- Role of the Compliance Officer
- Data Protection
- Directors Duties & Corporate Governance
- Consumer Protection Code (Complaints Handling)
- Risk-based Compliance Monitoring
- How to Handle a Financial Regulator inspection

We also specialise in-house training to meet your company's needs. If you would like further information on our training services please visit www.complianceireland.com or contact us at the details below.

WEBSITES UPDATED

We have updated our website www.complianceireland.com to include a 'What's New page' listing new additions to the website. Our website dedicated to Irish MiFID issues, www.mifid.ie, has been updated to include a raft of new material to assist firms to come to terms with their MiFID obligations. We have also updated www.antimoneylaundering.ie to include a webpage containing AML documents published by the Financial Regulator as well as copies of all Irish Guidance Notes.

Please take a moment to look through these sites and feel free to send us any

comments you have to
email@complianceireland.com

JOBS BOARDS UPDATED

www.compliancejobs.ie - Our specialist jobs board for compliance, risk and internal in-house legal professionals is updated regularly.

www.fundsjobs.ie - Our specialist jobs board for funds industry professionals is updated regularly.

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 IFSRA authorisation application.

Director Service - provision of non-executive directors to funds, UCITS managers and regulated investment intermediaries.

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

Managing Regulatory Inspections - assisting you to manage IFSRA regulatory inspections and desk audits.

Directors' and Senior Management coaching - coaching your staff to quickly absorb 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, assisting you 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.

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