



Regulatory Connection

Irish Financial Services Regulatory Authority

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Welcome

Happy New Year. 2005 will be a busy year for the Financial Regulator as we continue to adapt to the new legislation under the Central Bank and Financial Services Authority of Ireland Act 2004. Our remit will expand during the year to include the regulation of Money Transmission Providers and Mortgage Introducers. Further information on the new legislation is contained in this issue of Regulatory Connection.

In publishing our Strategy for 2005, we reviewed our existing mission, vision and high level goals and decided that our strategic approach for 2005 should remain unchanged. There are a number of factors which will inform our regulatory approach in 2005; the outcome and actions arising from current and recent investigations; the implementation of the new Act which involves introducing administrative sanction powers, the discretion to require Directors to report on compliance matters, the establishment of the Financial Services Ombudsman Scheme and the establishment of Industry and Consumer Consultative Panels. Our values allied with the better regulation principles of transparency, consistency, accountability, effectiveness, proportionality and necessity

should help us work together to ensure compliance is a key priority across the entire industry.

This can only happen with co-operation and consultation with the financial services industry and we look forward to receiving submissions on a number of consultations in 2005 from regulated firms, consumers and the newly formed Industry and Consumer consultative panels and Credit Union Advisory Committee.



LIAM O'REILLY

LIAM O'REILLY
Chief Executive



The opening day of trading at the new NYMEX exchange - NYMEX Europe in the IFSC. NYMEX is the one of the largest exchanges in the world for the trading of energy futures and options contracts and is regulated in the United States by the Commodities and Futures Trading Commission ('CFTC'). The rules of NYMEX were approved by the Irish Financial Services Regulatory Authority under Chapter VII of the Central Bank Act, 1989 in October 2004. As NYMEX Europe is only set up on a branch basis, its rules will be an extension of those of the New York Exchange and the CFTC which will act as its lead regulator.



Profile

Legal and Finance Department

In late 2004 the Regulatory Enforcement and Development Department was restructured in order to reflect its revised functions and renamed the Legal and Finance Department (LFD). The Legal and Finance Department comprises three distinct sections supported by a central administration and strategy team. They are the Finance Section, the Legal Section and the Unauthorised Financial Service Providers Unit.

The Finance Section undertakes all work related to the funding of the Financial Regulator. Following consultation with the industry in 2004, a system for raising funds from the financial services industry was developed and issuing of levy notices to regulated entities commenced mid year. In 2004 about 50 per cent of our funding was sourced from financial services providers, the remainder being provided by the Central Bank. In the light of industry feedback, the funding system will be further refined in 2005. As the Financial Regulator is required to submit its annual estimate of Income and Expenditure to the Minister for Finance for approval each year, the Finance Section is responsible for the work involved in the co-ordination and approval of the budget as well as the ongoing monitoring of expenditure.



MARTIN MOLONEY

The Legal Section comprises two units. The Legal Advice Unit provides legal advice to the Authority and to the other departments in the Financial Regulator. It is also responsible for co-ordinating the Financial Regulator's input into the development of cross-sectoral regulatory legislation. The Central Bank and Financial Services Authority of Ireland Act, 2004 has given the Financial Regulator extensive administrative sanction powers which should serve to promote compliance with its regulatory requirements. The Administrative Sanctions Unit is responsible for the work involved in the development and implementation of the Financial Regulator's administrative sanctions policy and procedures.

A specialised unauthorised financial service providers unit is responsible for the investigation of unauthorised activities and for taking appropriate enforcement action.

MARTIN MOLONEY
Head of Legal and Finance Department

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At the Irish Bankers' Federation and Institute of Bankers joint conference - Putting the New Regulatory Regime into Practice were I-r
Pat Farrell - Chief Executive of the Irish Bankers Federation,
Dr Anthony Walsh - Chief Executive of the Institute of Bankers,
Marion Kelly - Senior Manager of the Banking Regulatory Advisory Service, PricewaterhouseCoopers, Liam O'Reilly - Chief Executive of the Irish Financial Services Regulatory Authority, Paul Appleby - Director of Corporate Enforcement, Finbarr Murphy - Group Legal Adviser, Bank of Ireland and Enda Twomey - Deputy Chief Executive of the Irish Bankers Federation.



The Central Bank & Financial Services Authority of Ireland Act 2004

The Central Bank and Financial Services Authority of Ireland Act 2004 which came into effect on 1 August 2004 gives the Irish Financial Services Regulatory Authority new powers to impose sanctions for the contravention of financial services regulations prescribed under the Act. It also gives the Financial Regulator the discretion to require director's compliance statements. It expands the supervisory remit of the Financial Regulator to include Money Transmission Services and amends the definitions of a mortgage intermediary.

The administrative sanctions apply to regulated financial service providers; and/or persons concerned in the management of regulated financial service providers, as well as for acting as an accessory to such a contravention.

The Act makes the following sanctions available to the Financial Regulator:

- Caution or reprimand;
- Direction to refund or withhold all or part of any money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider;
- Financial penalties (not exceeding €5,000,000 in the case of a corporate or unincorporated body, €500,000 in the case of a natural person or such other amount as may be prescribed by regulation);
- Direction disqualifying a natural person from being concerned in the management of a regulated financial service provider;
- Direction to cease the contravention; and
- Direction to pay all or part of the costs of the Financial Regulator in relation to the investigation and inquiry concerning the breach.

Details on the Administrative Sanctions Procedure Consultation are contained in the News section of Regulatory Connection.

The Act also allows the Financial Regulator to serve a notice on a regulated financial service provider requiring it to provide a compliance statement. The Financial Regulator may also serve a notice to a regulated financial service provider to provide a compliance statement at the request of another public authority.

The compliance statement must specify whether the regulated financial service provider has complied with its relevant obligations during the compliance period or with such obligations as are specified in the notice. The Financial Regulator may also require the auditor of the regulated financial service provider to prepare a report in relation to the relevant compliance statement.

When introduced it will be an offence for a regulated financial service provider not to comply with these provisions. Breaches of these provisions are prescribed contraventions that may be subject to the administrative sanctions regime established in the Act.

A compliance statement must comply with guidelines issued by the Financial Regulator.

The Financial Regulator intends to engage in a consultation process with the industry prior to the issuance of such guidelines.



What is?

Here we look at the Committee of European Banking Supervisors (CEBS) and how its work fits into the EU decision making process.

The Committee of European Banking Supervisors (CEBS)

In late 2003, the European Commission adopted a Decision establishing the Committee of European Banking Supervisors (CEBS). The Committee consist of high level representatives of banking supervisors in the EU. CEBS currently has members from high level prudential supervisors from 25 countries and 46 organisations, including the Irish Financial Services Regulatory Authority.

CEBS is one of the Level 3 committees established in accordance with the recommendations of the Lamfalussy process and its four-level framework. In this framework the highest legislative power is placed on Level 1 institutions: the Commission, the European Parliament and the Council. Level 2 committees have limited legislative implementing powers which are controlled by the Parliament.

Level 3 has an advisory and co-operative role. Level 4 means the enforcement of EU legislation i.e. the Commission may take legal action against Member States suspected of breach of Community Law. In this framework financial regulation, supervision and stability issues are divided into three separate sectoral committees on Level 2 and Level 3: banking, securities and insurance. Other level 3 committees on which the Irish Financial Services Regulatory Authority participates include the Committee of European Securities Regulators (CESR) and the Committee of Insurance and Occupational Pensions Supervisors (CEIOPS).

The main tasks of the Level 3 banking committee CEBS are:

- To advise the Commission on banking policy issues, in particular in the preparation of draft implementing measures in the field of banking activities;
- To contribute to consistent implementation of EU directives and to the convergence of Member States' supervisory practises across the European Union;
- To promote supervisory co-operation, including through the exchange of information;
- To foster and review common and uniform day to day implementation and consistent application of Community legislation;
- To develop effective operational network mechanisms to facilitate the exchange of information in normal times and at times of stress
- Observance and assessment of the evolution of banking markets

CEBS does not have enforcement powers towards its members. Its work is based on consensus and all the members commit to implement CEBS' decisions in their countries. It can use the tools explicitly listed in CEBS Charter, i.e. issue recommendations, guidelines and standards. In the European committee structure CEBS has a position in which it has various obligations. It is accountable to the Commission and has an advisory role in banking issues. CEBS has also responsibility to co-operate with the Parliament in a transparent way and to conduct to constant dialogue.

Further information and news on the activities of CEBS can be found on www.c-eps.org



The Irish Financial Services Regulatory Authority recently hosted a consumer protection conference for international regulators to discuss best practice. Pictured at the conference were I-r Sarah Edmondson , Assistant Director, Consumer Protection of the Australian Securities & Investments Commission, Consumer Director, Mary O'Dea of the Irish Financial Services Regulatory Authority, and Bill Knight, Commissioner, Financial Consumer Agency of Canada. .



NEWS

This is a news section only. For all current information from the relevant department to your business, please visit www.ifsra.ie or contact the relevant area within the Financial Regulator 01-4104000

Administrative Sanctions Consultation

On 30 November 2004, a consultation paper on the Financial Regulator's Administrative Sanctions Procedure was published. The purpose of this consultation is to seek views from the public, representative bodies and the industry on the Financial Regulator's approach and to facilitate the development of an appropriate administrative sanctions policy. Comment is invited in respect of all aspects of the proposed policies and procedures and will be carefully considered. It is likely that the Financial Regulator will publish guidelines on the Administrative Sanctions Procedure in mid-2005. The consultation paper is available on the Financial Regulator's website – www.ifsra.ie or by telephoning 01-4101820. The closing date for submissions is 28 February 2005. The target is to develop and implement a strategy for using the new powers by the summer of 2005.

Fitness and Probity Consultation

The Financial Regulator is currently considering a common framework for testing the fitness and probity of directors and managers of regulated firms to replace the tests that are at present applied sector by sector. A consultation paper will be published in January 2005 seeking the views of the public, the financial services industry and the advisers to industry. Further information will be available on www.ifsra.ie when the consultation paper is published.

Mortgage Intermediaries

In December 2004 a notice was published in the national press informing the public of an imminent amendment to Consumer Credit legislation. As of 1 January 2005, the definition of Mortgage Intermediary in the Consumer Credit Act, 1995 has been amended by the Central Bank and Financial Services Authority of Ireland Act, 2004 to include those who refer business to an authorised intermediary in return for a commission. The notice also advised of three other amendments to the Consumer Credit Act, which commenced in August 2004. These amendments were to the definitions of 'consumer', 'housing loan' and 'mortgage lender'. Persons who arrange or offer for a mortgage lender to provide a consumer with a housing loan and/or introduces them to a mortgage intermediary who can arrange a housing loan for that person are now required to

be authorised by the Irish Financial Services Regulatory Authority. For further information or to request an application form, please contact Ciarán Farrell of the Financial Institutions & Funds Authorisations Department (FIFA) 01-4104000.

Money Transmission Providers

Money Transmission Providers will also fall to be regulated from 1 January 2005 under the Central Bank and Financial Services Authority of Ireland Act, 2004. The purpose of the legislation is to implement the Financial Action Task Force's recommendation that this type of business should be appropriately regulated to ensure compliance with national requirements to combat money laundering and terrorist financing. Authorisation must be in place by 30 June 2005. Holders of authorisation of Bureaux de Change business who are currently providing or wish to provide money transmission services do not require further authorisation under the Act. For further information or to request an application form, please contact Conor Ryder of the Financial Institutions & Funds Authorisations Department (FIFA) 01-4104000.

Insurance Supervision

The Financial Regulator has written to insurance firms to confirm that Irish GAAP (Generally Accepted Accounting Principles) will continue to be the reporting basis for prudential purposes for 2005. To enable earlier publication of the Insurance Statistical Review 2004, the Financial Regulator has also asked companies to submit their 2004 annual prudential returns by 30 April 2005.

Financial Institutions and Funds Authorisation

In November 2004, Financial Institutions and Funds Authorisation (FIFA) revised its requirements in relation to the use of financial derivative instruments by UCITS. FIFA also took this opportunity to make other technical amendments to the Notices for UCITS and non-UCITS and related Guidance Notes.

FIFA is currently revising the Application Form and related Guidance Note in respect of applications for authorisation under Section 10 of the Investment Intermediaries Act, 1995. The internal consultation process in respect of the documentation has been completed and the documentation was issued for industry consultation on 23 November 2004. The deadline for receipt of industry comments, originally 8 December 2004, has been extended at the request of the Dublin Funds Industry Association (DFIA).



International News

The Financial Conglomerates Directive

The Financial Regulator has been working closely with its European counterparts and the Department of Finance to develop the legal and regulatory framework to implement the Financial Conglomerates Directive in Ireland from 1 January 2005.

A Financial Conglomerate is a group which primarily operates in both the banking and insurance sectors, has at least one regulated entity and meets a number of quantitative limits.

The Directive was adopted by Member States of the EU in December 2002 and was transposed into Irish law on 19 November 2004. The purpose of the Directive is to introduce specific prudential legislation for the supplementary supervision of financial conglomerates. The requirements for conglomerates build on key aspects of the existing regulatory regimes for the individual business sectors, including the need to have adequate capital and arrangements for the sharing of information between supervisors of a financial group. Additional requirements have been developed to oversee risk concentration and intra-group transactions. In addition, conglomerates must also have adequate systems and controls to monitor risks in their business.

To develop the management of risk and efficiency of the regulatory process the directive establishes a single supervisory co-ordinator for each conglomerate. In addition to enhancing the regulatory regime for groups with an EU parent the Directive provides for improved oversight of worldwide conglomerates with a presence in Europe.

The Directive includes the following provisions:

- A group will be considered a financial conglomerate if it includes a regulated entity, at least 40% of its business is financial and at least 10%, or failing that €6 billion of its financial business, is in each of the insurance and the banking / investment sectors.
- Conglomerates will be required to:
 - Demonstrate that they hold sufficient capital to cover their consolidated level of risk;
 - Monitor risk concentration and intra-group exposures in the conglomerate;

- Have adequate risk management process and internal controls mechanisms throughout their business in a consolidated framework;
- Demonstrate that the conglomerate is effectively managed by personnel with the appropriate experience and are suitably qualified.
- For groups with Non-EEA parents the EU Regulators will need to satisfy themselves as to the equivalence of the third country supervisory regime and the ability to share relevant information on the sound prudential management of the group.
- EU Regulators will need to designate a single supervisory coordinator for each conglomerate in order to streamline supervision of the Group.
- Sharing of information between Financial Regulators in order to provide for reduction of risk and efficient supervision of conglomerates.
- Amendments to a number of the existing sectoral directives in order to harmonise regulations in the different sectors.

The Financial Regulator will be empowered by the enacting regulations to issue notices requiring actions to support the implementation of the directive. This will be supported by powers to hold both individuals and corporate bodies accountable for their actions.

The directive is effective from 1 January 2005 and will apply to all Financial Conglomerates with accounting periods commencing from this date. The Financial Regulator will be discussing the implementation of the directive with relevant authorised entities in Ireland.

Copies of the regulations, which have transposed the directive will shortly be available on the Department of Finance web-site: www.finance.gov.ie.

Recently published by the Committee for European Securities Regulators:

- Consultation on Credit Rating Agencies
- Report on the CESR investigation of mispractices in the European Investment Fund Industry
- Consultation on better transparency of voting rights and financial information from foreign issuers
- CESR's advice on possible implementing measures of the Transparency Directive

Further information is available on www.cesr-eu.org



Recent Publications

The following publications were recently published and are available on www.ifsra.ie

Industry Publications

- Insurance Statistical Review 2003
- Strategy 2005
- Administrative Sanctions Procedure Consultation
- Report on AIB investigations

Consumer Publications (also available on www.itsyourmoney.ie)

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| • Independent Consumer Guides to: | Motor Insurance
Home Insurance |
| • Leaflets: | Hire Purchase
Income Protection Insurance
Serious Illness Insurance |
| • Fact sheets: | Chip & PIN: what is it all about? |
| • Cost survey: | Life Insurance |

Forthcoming Consultation Papers

The following consultation papers will be published in the coming months:

- New common framework for fitness and probity test
- Insurance – Responsibilities of general manager.
- Insurance – More frequent reporting.
- Insurance – Review of Remuneration Structures and Transparency

Please see press and website www.ifsra.ie for details



At the announcement of a new voluntary switching code by credit institutions which will come into effect in January 2005 were Mary O'Dea, Consumer Director and Pat Farrell, Chief Executive of the Irish Bankers Federation. The Financial Regulator will monitor the implementation of the scheme.

