



Regulatory Connection

Irish Financial Services Regulatory Authority

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Welcome to the Spring issue of Regulatory Connection. In this issue we have provided an overview of the funding levy requirements for 2005, these will be issued from May to all regulated entities. A number of consultations are also currently underway to consolidate our regulatory framework to ensure a level playing field for regulated firms. It has been a busy period with four consultation papers published in the last three months including major consultations on administrative sanctions procedures, codes of conduct and fitness and probity requirements. We appreciate that it takes resources and time to respond to our consultations and recently extended the deadline for responses. Your views will help formulate our regulatory policy on the basis of our regulatory framework going forward and we encourage you to take the time to consider these proposals and give your feedback as part of this process.

LIAM O'REILLY
Chief Executive



LIAM O'REILLY

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Profile

Consumer Protection Codes Department (CPC)

All regulated firms are subject to consumer protection supervision by the Consumer Protection Codes Department (CPC).

Consumer Protection Codes is divided into three distinct areas – Policy and Management Information, Consumer Credit and Inspections.

The Policy division is responsible for areas such as the development of a Consumer Protection Code, the monitoring of advertising to ensure compliance with all legislative and regulatory requirements, the introduction of competency requirements for financial services providers and the formulation of policy in response to legislation.

The Consumer Credit division is responsible for the authorisation of Moneylenders and for monitoring the formal content of credit agreements to ensure compliance with the Consumer Credit Act. The section also has responsibility for approving both new bank charges and increases to existing charges.

The Inspections division is responsible for the on-site review of all financial services providers and also deals with all post-inspection issues arising from such inspections. The section monitors compliance with statutory and regulatory requirements and is sub-divided into three distinct areas – Insurance, Intermediaries (Moneylenders, Mortgage Intermediaries, Authorised Advisors and Multi-Agency Intermediaries) and Credit Institutions. The on-going programme of inspections is primarily routine, on-site reviews are also carried out in response to the investigation of complaints or issues in relation to a firm's poor supervision record (for example, the non-submission of accounts).



GEORGE TREACY
Head of Consumer Protection Codes

Themed inspections, focusing on areas such as client files or specific products are also undertaken.

CPC works closely with the Prudential Directorate of the Financial Regulator and liaises with other regulatory and representative bodies on an ongoing basis.

Contact

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Industry Funding

The implementation of industry funding in 2004 was generally well received by industry and we would like to thank all those firms who made the operation of the levy for 2004 such a success by providing the required information and paying the levy on a timely basis.

There are a number of issues that arose in 2004 that are currently being addressed which are appropriate to bring to the attention of the industry in the context of the 2005 levy.

Funding surpluses

A number of the industry categories generated a "funding surplus" for 2004. This has occurred due to the levy raising more money than required to fund 50% of the actual outturn cost of the Financial Regulator. This is mainly due to the Financial Regulator spending less than budget in 2004.

It is being proposed to the Minister for Finance that any surplus arising in a particular industry category in 2004 should be used to offset against the levy amount for that industry category in 2005.

Levy for 2005

The Regulations for 2005 are currently being finalised for submission to the Minister at the end of April. The current draft of the Regulations for 2005 is broadly similar to the approach taken in 2004 and we are not proposing any major changes to the structure or format of the levy.

The 2005 levy rates, as detailed in the Regulations, have been determined based on the 2005 budget of the Financial Regulator offset by the extent of any funding surplus which may be applicable to a particular industry category.

The budget of the Financial Regulator has increased by 13.2% from €39.3m in 2004 to €44.5m in 2005, the main

driver of this increase has been the increase in staff numbers. The amount to be raised by the 2005 levy will be €20.75m, after the application of the funding surplus from 2004 which is anticipated to be in the region of €1m. This represents an increase of approximately 6.4% over the amount raised in 2004. A draft of the Regulations was presented to the Industry Panel for their comments.

Electronic Payments

The Financial Regulator has received a number of payments that have been made by Electronic Funds Transfer with no details (Account Number, Levy Notice number) being provided with the payment as to who it is from. Approximately 20% of all such payments were made without full details being provided. Without these details we will be unable to identify the entity to which the payment relates and therefore the account will continue to show a balance outstanding. The length of time needed to investigate these "unallocated" payments is an inefficient use of resources and could result in us having to withdraw this method of payment for 2006.

Accordingly we request any firm who proposes to make a payment by EFT in 2005 to ensure that they include the invoice number and account number with the payment instructions. Based on our experience in 2005 we will examine whether we can continue to use EFT as a payment mechanism.

Timetable for 2005

Once the Regulations are approved by the Minister we will commence issuing levy notices which we expect to be during the period May – September.

In the meantime, if you have any queries about funding please contact 01-4104593

What is?

Here we look at the Committee of European Securities Regulators (CESR) and how its work fits into the EU decision making process

Committee of European Securities Regulators (CESR)

CESR (pronounced CAESAR) is an independent Committee of European Securities Regulators and was established in 2001. The Committee of Wise Men, chaired by Baron Alexandre Lamfalussy, outlined in its 2001 report several shortcomings in the legislative system for securities. The report proposed a four level approach with regard to the legislative process in order to solve these problems. Furthermore, the Committee proposed the creation of the European Securities Committee (ESC), which primarily has a regulatory function and is composed of representatives of the Finance Ministries, and CESR which has an advisory function. The ESC and CESR were formally established in June 2001 and held their first meetings in September 2001.

Each Member State of the European Union has one member on the Committee. CESR meetings are normally attended by Patrick Neary, Prudential Director and a number of staff of the prudential directorate also participate in CESR committees and meetings. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level. CESR is accountable to the European Commission and reports to the European Parliament and the Council of Ministers.

The purpose of CESR is to:

- **Improve co-ordination among securities regulators:** by developing effective operational



CESR Secretary General Mr Fabrice Demarigny

network mechanisms to enhance day to day consistent supervision and enforcement of the Single Market for financial services; Having agreed a Multilateral Memorandum of Understanding (MoU), CESR has made a significant contribution to greater surveillance and enforcement of securities activities.

- **Act as an advisory group to assist the EU Commission:** in particular, by preparing advice that will assist the Commission in draft implementing measures of EU Lamfalussy framework directives in the field of securities; For example, CESR has provided advice for implementing measures on Directives such as Market Abuse, Prospectuses; MiFID etc. Occasionally, CESR is also asked to give advice before any Directive exists, for example, most recently CESR was asked to provide advice as to what 'regulatory' approach might be appropriate for Credit Rating Agencies; this included identifying if a regulatory approach was even necessary, what benefits and drawbacks it might have and setting out the what regulatory options existed and how they might be put in place.
- **Work to ensure more convergent and timely day-to-day implementation of community legislation in the Member States:** This is carried out in a number of ways, partly through the development of common standards and guidelines but also through some



permanent groups which focus on issues which require ongoing work to deliver convergence on a day to day basis. These permanent groups exist in the area of enforcement and surveillance (CESR-Pol) and in relation to Financial Information (CESR-Fin); In addition it monitors implementation of standards etc. through what is known as Review Panel which then publishes its findings on CESR's website.



Getting involved in CESR's work through its consultation processes:

CESR considers that public consultation is a critical part of effective policy formulation and, as such, is committed to working in an open and transparent manner as set out in its Public Statement of Consultation Practices (December 2001, Ref. CESR/01-007c) available on CESR's website. Those consultations which are open for responses to be received are indicated under the button 'consultations' on the website and responses can be submitted electronically through the site. CESR also hosts open hearings on its various pieces of work during the consultation period which enables any interested parties to express their views in person, these events are advertised on the website where you can also book a place to attend. Once the consultation period has closed, CESR publishes the responses and then considers how best it might reflect the comments received in its final position and finalises the text. However, in addition CESR sets out exactly how it has taken into account the responses received through a separate document called a 'feedback statement'.

Further information and news on CESR's activities can be found on its website: www.cesr-eu.org

Recently Published by the Committee of European Securities Regulators (CESR)

* Technical Advice Submission to the European Commission on the First set of mandates under the directive on Markets in Financial Instruments (MiFID)

- * Publication of Final Concepts Paper setting out principles CESR will use to guide them in establishing the equivalence between third countries GAAP and IAS/IFRS
- * Feedback Statement on CESR's technical advice on Level 2 implementing measure on the first set of mandates – Markets in Financial Instruments Directive
- * CESR publishes the final concepts paper which sets out the principles it will use to guide them in establishing the equivalence between third countries GAAP and IAS/IFRS
- * Final concept paper on equivalence of certain third country GAAP and on description of certain third countries mechanism of enforcement of financial information
- * Final concept paper on equivalence of certain third country GAAP and on description of certain third countries mechanism of enforcement of financial information – Feedback statement
- * CESR's final guidelines on the application of the transitional provisions of the UCITS Directive
- * Consultation on CESR's draft advice to the European Commission on the eligible assets of UCITS
- * CESR starts Level 3 work on the establishment of a mediation mechanism amongst supervisors
- * CESR First Progress Report on Supervisory Convergence in the Field of Securities Markets for the Financial Services Committee



News

Consultations Update

Current Consultations

Consumer Protection Code

Consultation Paper CP10 on a draft consumer protection code was published on 14 February and sets out requirements for financial services providers when dealing with their customers. The proposed new code will apply to all regulated financial services providers and contains provisions on the sale of credit, savings, insurance and investment products. **The closing date for submissions has been extended to 13 May 2005.**

Fitness & Probity Standards

Consultation Paper CP11 on the framework of standards for testing the competence and probity of directors and senior managers of financial services firms was published on 28 February. The consultation reviews the current standards and means whereby proposed directors and managers are tested with a view to developing a comprehensive 'fit and proper' testing framework. It also raises issues about the scope and frequency of the test and the treatment of old offences. **The closing date for submissions has been extended to 30 June 2005.**

Feedback

A summary of submissions received for the Consultation on the Administrative Sanctions Procedure and the Review of Remuneration Structures and Transparency will shortly be published on www.ifsra.ie

Regulatory Reporting & International Financial Reporting Standards (IFRS)

Based on the requirements of the European Parliament, all listed European companies must prepare their consolidated financial accounts in accordance with adopted International Financial Reporting Standards (IFRS) - formerly known as International Accounting Standards (IAS) - for accounting periods commencing after 1 January 2005. Member States have the option of extending this requirement to the annual accounts of listed companies and to the annual and/or consolidated financial accounts of non-listed companies.

The Minister for Enterprise, Trade and Employment has announced that this option will be permitted but will not be mandatory. Therefore, listed companies must use IFRS for consolidated financial accounts; in other instances there is a choice whether to prepare accounts based on IFRS or Irish generally accepted accounting principles (GAAP).

The assets and liabilities in the financial statements generally form the basis for regulatory reporting to the Financial Regulator. IFRS is mandatory for a very small number of regulated entities (i.e. those listed companies, mostly banks which produce consolidated accounts). The Financial Regulator has decided to permit but not require the use of IFRS figures for regulatory reporting purposes. Accounts prepared under IFRS will produce levels of capital different to those used for regulatory reporting purposes and there is likely to be greater volatility in the financial statements of financial institutions following the introduction of IFRS.



The Financial Regulator is currently working with industry bodies and representatives from the accounting profession to finalise what adjustments (i.e. so-called "prudential filters") are required to make IFRS-based numbers appropriate for regulatory reporting purposes. Thus those entities using IFRS-based figures for prudential reporting, and also those using local GAAP under FRS 17 in respect of Defined Benefit Pension Schemes, will need to use prudential filters.

Insurance Companies and Credit Unions will continue with existing supervisory returns based on local GAAP.

Anti-Money Laundering

Criminal Justice (Terrorist Offences) Act, 2005

The Criminal Justice (Terrorist Offences) Act, 2005 was signed into law on 8 March 2005. The provisions of the Act have immediate effect with the exception of those set out in Section 32, which requires designated bodies to have procedures in place to facilitate detection of Terrorist Financing. The provisions of Section 32 will come into force on 8 July 2005. Guidance notes in relation to Terrorist Financing were issued with the approval of the Money Laundering Steering Committee on 11 March 2005. These Guidance Notes are available on the Financial Regulator's website (www.ifsra.ie) under the heading 'Anti-Money Laundering', sub-heading 'Guidance Notes'. Regulated firms should use these Guidance Notes, which are recommendations as to good practice, in carrying out training in this area. The Guidance Notes will be subject to review by the Money Laundering Steering Committee in the light of experience of the operation of the Terrorist Financing legislation in Ireland and internationally.

Funds

Guidance Note on Simplified Prospectus

In March 2005, Financial Institutions and Funds Authorisation issued its requirements in respect of the publication of a Simplified Prospectus for collective investment schemes established as UCITS. This resulted in a new Guidance Note 1/05 and amendments to the provisions of the UCITS Notices, specifically Notice UCITS 6.



International News

Convergence of Supervisory Practices – Banking Consultations 2005

The Committee of European Banking Supervisors (CEBS) has defined its work programme for 2005, with the assistance of its Consultative Panel. CEBS plans to issue a number of public consultations during the coming year. Most of them will be related to the implementation of the proposed Capital Requirements Directive (CRD) which is expected to be adopted by the European Parliament later this year. The proposed Directive sets out new rules on capital requirements for banks and investment firms with the aim of making sure that financial institutions' capital is more closely aligned with the risks they face.

The implementation of the new Directive and the new International Financial Reporting Standards (IFRS) will require CEBS to take a step forward in the convergence of supervisory practices. Enhanced convergence and co-operation should reduce the regulatory reporting burden of banking industry and contribute to more level playing field in the EU.

CEBS has divided its work into three main priority areas: (i) regulatory advice to the Commission; (ii) convergence of supervisory practices; and (iii) co-operation and information exchange. Under each work area separate work streams are highlighted as a high priority in 2005.

CEBS has already issued consultations on common reporting for the solvency ratio and financial reporting requirements; supervisory disclosure of rules and practices on capital adequacy and supervisory review process;

Public consultations are also being prepared in the following areas:

Convergence of supervisory practices:

- * Validation guidelines of advanced approaches for measuring credit and operational risk;
- * Recognition process for external credit assessment institutions; and
- * Supervisory guidance for the new IFRS framework.

Co-operation and information exchange:

- * Consolidated supervision of cross-border banking groups and cooperation between home and host supervisors.

Apart from these strands of work on convergence of supervisory practices, the Commission has indicated that CEBS will receive requests for advice on several new issues. These include: possible obstacles to cross-border mergers in banking, the definition of regulatory capital and the supervision of liquidity risk.

The work programme is published in full on the CEBS website and a timeline of CEBS work will be continuously updated.

Recently published by the Committee of European Banking Supervisors

- * Consultation on European Supervisory Disclosure
- * Questionnaire on Cross-Border Mergers
- * CEBS develops a standardised Financial Reporting Framework

Further information: <http://www.c-eps.org>



CEBS Work Programme 2005:
<http://www.c-eps.org/documents/CEBSWorkProgramme2005.htm>

The timeline of the work programme:
<http://www.c-eps.org/documents/CEBSWorkProgramme2005.pdf>



Mary O'Dea, Consumer Director, Financial Regulator & Nora McDermott, Director of the Library Council at the announcement of the Financial Regulator's Dublin library visits

Recent Publications

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

Industry Publications

- * Review of Remuneration Structures and Transparency (CP9)
- * Codes of Conduct Consultation (CP10)
- * Fitness and Probity Consultation (CP11)

Consumer Publications

(also available on www.itsyourmoney.ie)

Cost Surveys

- Personal current accounts - Issue 3
- Home Insurance - Issue 2
- Hire purchase – Issue 1

Fact Sheets

- Payment Protection Insurance
- How to Complain

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