Welcome to Northern Trust’s third regulatory newsletter of 2012. Dedicated to helping you stay ahead of regulatory change, the newsletter summarises the latest regulatory developments impacting Europe and provides updates on how Northern Trust is evolving to support your requirements.

A regulatory calendar provides an overview of the main regulatory milestones for 2012 and beyond. Readers of the electronic version of the newsletter can use the links to the latest regulatory insights from Northern Trust.

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## EMEA Regulatory Calendar

### Key milestones

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<td>Action plan Q3 2012</td>
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<td>Regulation published 3 July 2012</td>
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<td></td>
<td>Final recovery and resolution plan submission</td>
<td>Publication of revised directive expected December 2012</td>
<td>Implementation 31 December 2012</td>
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<th>Q1</th>
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<td>Title VII Mandatory clearing Q1/Q2</td>
<td>FATCA regime effective from 1 Jan 2013. Phased implementation to 2017</td>
<td>Phased implementation 2013-2019. January 2013 implementation deadline will slip</td>
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<td>FFIs to enter into agreement with IRS by 30 June 2013</td>
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<td>Implementation by 22 July 2013</td>
<td>Clearing obligation likely to take effect summer 2013. Derivatives to be reported to trade repositories 1 July 2013</td>
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## 2014

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<th>Q1</th>
<th>EU Solvency II</th>
<th>Applicable</th>
<th>EU Financial Transactions Tax</th>
<th>Comes into effect in the EU from January 2014</th>
<th>US FATCA</th>
<th>Withholding tax starts for fixed, determinable, annual or periodical income only</th>
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<td>Q4</td>
<td>EU Review of Market Abuse Directive</td>
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<th>EU Target2- Securities</th>
<th>Operational 2015</th>
<th>UK Independent Commission on Banking Proposals</th>
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## 2017 - 2019

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### Glossary

1. Legal Entity Identifier (LEI)

OVERVIEW

To monitor systemic risk and manage financial stability, the US Office of Financial Research (OFR) and other G20 regulators will require financial institutions to report on information such as exposure and market risk.

As a result, a new global identification standard, the Legal Entity Identifier (LEI), has been established to act as a universal standard for uniquely identifying all entities related to a financial contract. It will persist over an entity’s life regardless of corporate actions or other business or structural changes. As adoption evolves, LEI will enhance regulators’ ability to monitor and analyse threats to financial stability. It will also enable financial institutions to improve their internal credit and exposure risk management capabilities.

LEI will gradually be implemented across the industry, driven by legislative and rulemaking processes in each jurisdiction. In the meantime, the Financial Stability Board (FSB) is tasked with establishing the Global LEI Central Operating Unit by March 2013 which will oversee the global LEI utility implementation and is charged with issuing implementation deadlines.

KEY IMPACT

The CFTC is the first regulator to mandate the use of LEI requiring swap counterparties to be identified by a LEI by July 16, 2012. Because the global LEI system was not functioning at that time, the CFTC provided for a CFTC Interim Compliant Identifier (CICI) that conformed to the endorsed global LEI standard, and made an explicit commitment for the CICI to transition to the global LEI. For more information on entities required to register as a swap counterparty, visit the CFTC’s website at http://www.cftc.gov.

On 10 September 2012 the CFTC provided an update clarifying the timing of registration for swap dealers. In summary, swap dealer registration regulations go into effect on 12 October 2012, and entities that have more than the de minimis (US$8 billion) level of dealing must register by no later than two months after the end of the month in which they surpass the de minimis level. To learn more please visit http://www.cftc.gov/pressroom/pressreleases/pr6348-12.

NORTHERN TRUST ACTIONS

Northern Trust’s internal working groups are analysing the impacts of the new and emerging LEI-driven regulatory reporting requirements on both Northern Trust and our clients. We continue to work closely with industry peers to develop best practices around implementation of the standard. Northern Trust also is a member of the Private Sector Working Group that advises and supports the FSB’s global LEI Implementation Group.

NEXT STEPS

Although at the early stages of adoption, more regulators are beginning to include LEI in their draft technical standards. Northern Trust continues to monitor developments closely and will communicate any potential impact to our clients.
EUROPE

2. Undertakings for Collective Investment in Transferable Securities (UCITS V)

OVERVIEW

With the continuing objective of strengthening investor protection, on 3 July 2012 the European Commission published a proposal for the UCITS V Directive which includes further revisions to the regime for Undertakings for Collective Investment in Transferable Securities.

KEY IMPACT

The draft Directive covers five key areas:

1. **New depositary liability requirements.** Introduction of an EU-uniform standard with a ‘strict liability’ obligation on depositaries to return instruments lost in custody irrespective of fault or negligence and at the cost of the principle custodian. The resulting increased oversight could potentially impact investment strategies with key drivers being asset type and jurisdiction.

2. **Greater transparency in manager remuneration.** Requirement for management companies to put in place a remuneration policy that is consistent with UCITS’ sound risk management principles and that complies with minimum remuneration principles. All remuneration, with appropriate detail, would need to be disclosed in the UCITS fund’s annual report.

3. **Eligibility to act as a depositary.** Harmonisation of entities eligible to act as depositaries for a UCITS fund. UCITS V proposes that only credit institutions and investment firms be permitted to act as UCITS depositaries because they provide sufficient guarantees in terms of prudential regulation, capital requirements and effective supervision.

4. **Delegation of custody.** Introduction of a set of governing rules for due diligence on the selection and appointment of a sub custodian and the ongoing monitoring required.

5. **Sanctions for breaches of the UCITS rules.** A common approach on how core breaches of the UCITS legal framework are sanctioned, e.g., by introducing common standards on the levels of administrative fine, a minimum list of sanctioning criteria and the requirement for competent authorities and UCITS managers to establish whistle-blowing mechanisms.

NORTHERN TRUST ACTIONS

Internal working groups are assessing the impact and opportunities of the proposed rules taking into account our findings in relation to the AIFMD.

**Depositary Services:** Northern Trust will undertake a detailed gap analysis of markets we currently support, the potential impact on operations and our liability arrangements to understand how the proposed legislation may affect our services and any potential fee increase that may be associated with the implementation of the regulation.

**Management Company Services:** Northern Trust will review the requirements for increased transparency on remuneration to ensure we are aligned with regulatory requirements.

NEXT STEPS

The proposed Directive is now with the European Parliament and the Council for their consideration and is anticipated to come into force by the end of 2014.
### 3. Packaged Retail Investment Products (PRIPs) Regulation

#### OVERVIEW

On 3 July 2012 the European Commission published a draft regulation which introduces the requirement for a key information document (KID) for packaged retail investment products (PRIPs). The proposal will apply to product manufacturers such as fund managers, insurers and banks, and any person selling investment products to retail investors.

The Commission has defined PRIPs as a wide range of investment products, regardless of their legal form, where the amount repayable to the investor is exposed to fluctuations in reference or in the performance of one or more underlying assets. This includes investment funds (closed- and open-ended), certain insurance products, derivatives and private pensions.

#### KEY IMPACT

- The KID is a plainly-worded document outlining the features, risks and costs of investment products. It must be accurate and not misleading, and provided free of charge as a stand-alone document in good time before a transaction is concluded.
- The Commission has proposed to exempt UCITS funds from the KID requirements under the PRIPs regulation for a transitional period of five years with potential adjustments to the UCITS IV Key Investor Information Document (KIID) addressed at the end of the period.
- Unlike the UCITS IV KIID, the KID under PRIPs is not restricted to two pages in length. Additionally, a retail investor can claim damages from the product manufacturer for any loss caused through the KID’s use where the KID does not comply with the regulation.

#### NEXT STEPS

The proposed regulation is now with the European Parliament and the Council of the European Union for their consideration. It may be subject to further extensive amendments before it comes into effect by the end of 2014.

#### NORTHERN TRUST ACTIONS

Northern Trust is currently exploring how we can leverage our existing infrastructure to offer KID services which meet PRIPs requirements. We currently offer services to support KIID generation and maintenance under UCITS IV.
4. Update on the Alternative Investment Fund Managers Directive (AIFMD)

OVERVIEW

The Directive imposes new regulatory provisions on non-UCITS that actively market to EU investors. Each member state is due to transpose the Directive into domestic law by 22 July 2013. Two further phases remain before the Directive is fully implemented at the national level:

- ‘Level 1’ has already established the high level legislative framework
- ‘Level 2’ implementing measures are expected imminently, and
- ‘Level 3’ national legislative and regulatory guidelines remain to be completed

‘Level 2’ measures providing detailed guidance on how the regulation is to be interpreted and implemented, originally expected in June, are now expected to be issued late September/early October 2012. We also understand the national regulators and legislators have commenced the transposition of the Directive into national law.

NORTHERN TRUST ACTIONS

While the final AIFMD implementing measures are yet to be clarified, we are working closely with our clients to review the implications and assess the strategic opportunities presented by the regulation.

Internal working groups are actively working on the implementation of AIFMD. We will provide an overview of our approach to AIFMD at a breakfast workshop to be held at our London offices in the near future. Industry experts will join us to explore the latest developments in the Directive and the potential impact of the regulation to fund managers and the industry. If you are interested in attending the event, please contact your Northern Trust relationship manager or regular contact.

Impacts

- Non-UCITS funds managed in, domiciled in, and/or distributed in the European Union
- Non-EU managers wishing to sell in Europe
- Institutional investors – the depositary liability requirement has the potential to raise costs and may drive some managers to manage funds differently

Key takeaway

- Managers need to demonstrate new governance, reporting and structural requirements
- New operational requirements have been established around depositaries, valuation, reporting and distribution
- Potential investors will need to consider the impact of AIFMD as it may raise costs and may drive managers to manage funds differently

Impacts

- Non-UCITS funds managed in, domiciled in, and/or distributed in the European Union
- Non-EU managers wishing to sell in Europe
- Institutional investors – the depositary liability requirement has the potential to raise costs and may drive some managers to manage funds differently
5. European Market Infrastructure Regulation (EMIR)

View further Northern Trust insights

OVERVIEW

The regulation entered into force on 16 August 2012 and is subject to gradual implementation. Significant technical standards that underpin EMIR need to be formally adopted by the European Commission before the regulation becomes fully operative.

All the standards were due to be finalised by the end of September 2012, however, the European Supervisory Authorities (ESAs) have requested a postponement of the deadline for the submission of the draft regulatory technical standards on risk mitigation techniques for OTC derivatives contracts not cleared by a central counterparty. This is to ensure consistency with the on-going global development of international standards by the Working Group on Margining Requirements of the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO). These rules are expected to be delivered by the close of 2012.

It is now most likely that mandatory clearing in Europe will be phased in late in the second quarter of 2013, commencing with vanilla interest rate and credit products.

NEXT STEPS

It is expected that the European Commission will set a new deadline for finalisation of the standards once the current deadline of 30 September 2012 has expired.

NORTHERN TRUST ACTIONS

Northern Trust is continuing to prepare for mandatory central clearing of OTC derivatives and will be able to support clients’ needs ahead of the regulatory timelines. We are rolling out an automated solution to support clearing on behalf of clients which includes the ability to submit trades for clearing and support daily margin processing with multiple clearing members.

We are unaffiliated with particular clearing members or clearing houses and at every point in the central counterparty clearing process will, therefore, be able to act as our clients’ independent derivatives servicing agent to help them execute their trades efficiently and pursue their investment strategies.

We have developed and continue to develop solutions that build on our expertise in core custody and collateral management to provide transparent reporting, processing and margin solutions, helping investors manage the greater complexity of the central clearing environment.

Impacts

- All over-the-counter (OTC) derivatives users, even those granted a pension exemption, given the knock-on impacts to the bilateral market

Key takeaway

- The complexity of the collateral management process will increase
- The requirement to finance margin requirements, together with clearing fees, may affect performance
6. Markets in Financial Instruments Directive (MiFID II)

OVERVIEW

MiFID II builds on the initial MiFID Directive (implemented in November 2007) to promote further competition in the European securities market, modernise market structures, increase market transparency and enhance investor protection. It will be reinforced by other regulatory changes such as regulations on OTC and central counterparties (EMIR), short-selling and credit default swaps (CSD) together with upcoming reviews of the Market Abuse Directive (MAD) and the Securities Law Directive (SLD).

Since the release of the Commission’s legislative proposal to amend MiFID on 20 October 2011, the ESMA has published final reports on the guidelines concerning the compliance function and on the guidelines on suitability requirements. ESMA published feedback to the consultations at the end of February 2012. Debate continues over key areas such as:

- **Third-country access** – concerns over the current wording of the text which restricts access to European markets for countries such as China and the United States
- **Transparency** – concerns over the potential impact of pre-trade information transparency requirements
- **Oversight** – concerns that the new category of Organised Trading Facilities (OTFs), designed to ensure all organised trading is conducted on regulated venues, potentially risks creating an overly complex regulatory framework

NORTHERN TRUST ACTIONS

Following our response in February 2011 to the Commission’s initial consultation process on revising MiFID, Northern Trust is actively engaged with and lobbying through industry bodies, such as the Association of Global Custodians and the Investment Management Association, to examine the impact of the proposals contained in the revised text.

NEXT STEPS

The proposals are currently with the European Parliament and the Council of Ministers for review. Voting has been pushed back to October which may cause a delay in a final agreement on the proposals which was expected by the end of the year. Implementation of MiFID II is not expected until 2015.

Impacts

- Anyone operating in the European securities market including:
  - Broker dealers
  - Fund distributors
  - Traditional and alternative investment managers
  - Wealth management
  - Custodians

Key takeaway

- A key piece of regulation set to transform the way a range of instruments are traded in Europe
- Introduces a new passporting regime for non-European Economic Area (EEA) firms
- European Securities and Markets Authority (ESMA) and national regulators (in co-ordination with ESMA) given powers to intervene to protect investors from inappropriate products or services by banning products
- Increased transparency and reporting requirements for product classes such as OTC derivatives and fixed income
- Local authorities/municipalities are to be treated as retail clients unless an opt-up procedure is followed to treat them as elective professional clients
7. European Commission’s consultation paper on a future framework for investment funds and ESMA’s guidelines on exchange traded funds (ETF) and other UCITS issues

OVERVIEW

On 26 July 2012, the EU Commission published a consultation paper drawing from its work on shadow banking and the ESMA guidelines on ETFs and other UCITS. The Commission’s consultation paper focuses on:

- Money market funds and how such funds should be regulated in the future
- The fund industry’s involvement in securities lending and repurchase (repo) arrangements
- The fund industry’s exposure to certain OTC derivatives that, in future, will be subject to central clearing and the fund industry’s approach to investors’ redemptions

ESMA’s guidelines on ETFs and other UCITS issues were published the same day and include a consultation on the treatment of repo and reverse repo arrangements. The guidelines will apply to national securities markets regulators and UCITS management companies, and set out the information that should be given to investors on:

- Index-tracking UCITS and UCITS exchange-traded funds (ETFs)
- Specific rules for UCITS when entering into over-the-counter financial derivative transactions and efficient portfolio management techniques
- Criteria for financial indices in which UCITS may invest

Embedded in the guidelines is a consultation paper in which ESMA proposes a distinct regime for repo and reverse repo arrangements which, unlike securities lending arrangements, would allow a proportion of the assets of the UCITS to be non-recallable at any time at the initiative of the UCITS.

NORTHERN TRUST ACTIONS

Northern Trust is actively participating in industry groups (such as the Irish Funds Industry Association) that are actively lobbying the regulator.

Northern Trust spoke at the Zurich ETF seminar on 25 September 2012 and will be speaking at the ETF & Indexing Investment Conference, London, 24-25 October 2012 on how to adapt to the changing regulatory environment.

NEXT STEPS

Following a review of the responses to the consultation paper, ESMA will develop the final policy approach on repo and reverse repo transactions. That policy approach will be integrated into the remainder of the guidelines on ETFs and other UCITS issues.
8. Solvency II Directive

View further Northern Trust insights

**OVERVIEW**

As one of the biggest regulatory challenges facing the insurance industry in Europe today, the EU Directive seeks to enhance capital and risk management requirements and ensure consistency across the European Union.

Significant developments to the timeline and policy developments took place over the past few months:

- The date at which rules take effect for insurance companies, however, remains at 1 January 2014, leaving a tight timeframe for final preparations of the new rules.
- In late July 2012, the European Insurance and Occupational Pensions Authority (EIOPA) published responses following the public consultation on Solvency II reporting and disclosure requirements for insurers.

**NORTHERN TRUST ACTIONS**

Northern Trust is reviewing the policy paper and EIOPA’s comments and plans to develop a Quantitative Reporting Template (QRT) which will help our clients meet their risk and asset data obligations under Solvency II. This will form part of a wider set of solutions to support our clients’ risk and asset data needs under the regulation including:

- **Offering access to a single data source for accounting, valuation and asset characteristics** providing insurers with a high degree of consistency of asset data and reducing the need for reconciling multiple data sources and additional data enrichment on asset characteristics
- **Leveraging existing asset characteristics** such as duration, security title, credit ratings and issuer name to provide the necessary data to support QRT requirements
- **Developing Solvency II specific reporting** in line with the proposed regulatory requirements
- **Providing a Solvency II risk modelling solution** for companies using a standard risk model or an internal modelling solution, with risk analytical tools used to determine Solvency Capital Requirement (SCR) and Minimum Capital Requirement (MCR)
- **Providing a ’peek through’ service** to look through to individual security level for the underlying holdings for collective investment schemes/pooled funds and providing asset characteristic data by security

Northern Trust is speaking on reporting and governance challenges for insurers under Solvency II at the Solvency II and Risk Insurance Conference 2012, 9-10 October in London.
UNITED KINGDOM

9. Retail Distribution Review (RDR)

OVERVIEW

Under the new RDR regime, from 31 December 2012 advisors cannot accept commission payments from fund promoters and fund promoters cannot make payments to advisors. Advisors will have to negotiate fees directly with their investors when making an investment recommendation and also negotiate a separate fee for providing an ongoing service. This has resulted in the need for managers to set up 'clean share classes' with a reduced annual management charge (AMC) which does not pay commission.

NORTHERN TRUST ACTIONS

To support our clients and their IFAs in the implementation of RDR, Northern Trust offers a comprehensive product offering. To ensure a smooth transition, the following information will be required from our clients:

- Number of additional share classes
- Terms of business for each share class – new and amendments to existing
- Launch price for new share classes
- Provision of amended application form and Key Investor Information Document (KIID)
- Preferred implementation date
- New terms of business for IFAs and platforms
- Confirmation on whether allow bulk instructions from IFAs for conversions and fee instructions
- Confirmation on whether apply a special dealing price for bulk conversions
- For dual priced funds, tolerance needs to be agreed to monitor capital and income caused by conversions
- Application of equalisation on dealing for conversions

For further information please contact your relationship manager.

Impacts

- Any fund using a UK-authorised independent financial adviser (IFA) who is providing advice to retail investors

Key takeaway

- Comes into force 31 December 2012
- Aims to improve the level of advice provided to retail investors by increasing advisors’ knowledge and making charges more transparent to investors
- Fund promoters should have assessed the impact to their distribution chain, and considered any required technology enhancements and potential changes to their distribution strategy

Key takeaway

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- Fund promoters should have assessed the impact to their distribution chain, and considered any required technology enhancements and potential changes to their distribution strategy
Impacts

- UK pension funds, local government pension schemes, multinational pension schemes, asset managers and insurers
- European, Asian and US-based asset managers looking to operate a central platform for global distribution needs

Key takeaway

- First UK-authorised fund regime for tax-transparent contractual funds, supporting:
  - Master feeder structures under UCITS IV – allows for economies of scale, cost reduction and increased returns for investors
  - Solvency II – reinsurers need to move assets to a tax-transparent fund to mitigate regulatory capital cost
  - FATCA and Dodd-Frank Act – affecting investment managers with US clients and highlighting the advantages of greater oversight and tax-transparency over assets
  - Asset pooling – multinationals, local government pension schemes, investing pension assets alongside peers

10. Tax-Transparent Funds (TTF)

View further Northern Trust insights

OVERVIEW

The UK government announced its intention in the 2011 budget to introduce a new, regulated, tax-transparent fund (TTF) vehicle primarily to facilitate the setting up of pooled ‘Master Funds’ under UCITS IV. The main objective of introducing such fund vehicles is to ensure that the United Kingdom is able to compete to win an appropriate share of European pooled funds as UK-domiciled funds.

Following feedback from stakeholders including the FSA and expert advisory bodies, in July 2012 the UK Treasury (HMT) released a revised set of draft regulations covering the UK TTF with the aim of ensuring the proposed fund scheme is commercially attractive. HM Revenue and Customs (HMRC) also issued three sets of draft tax regulations covering capital gains tax, stamp duty and value added tax.

NORTHERN TRUST ACTIONS

A strong lobbyist for the creation of the TTF, Northern Trust has played a central role in the industry consultation process and the HMT working groups involved in designing the UK TTF and assisting with the drafting of UK rules.

We continue to play a strong role in the lobbying process, including providing feedback at an open house session in August where officials from HMT and HMRC presented the new TTF scheme. Northern Trust has responded to a consultation process on the revised draft regulations which closed 3 September 2012.

Northern Trust is working closely with the Investment Management Association’s Technical Working Group on the Statement of Recommended Practice (SORP) to ensure that the UK TTF is SORP compliant. This will enable UK pension funds, setting up the TTF, or investing into one offered by an asset manager, to produce accounts that are true and fair and that can be used for the basis of an actuarial valuation.
IRELAND

11. Irish fund regulatory changes

OVERVIEW

In an address on 12 September 2012 to the Irish Funds Industry Association, Irish Central Bank Deputy Governor, Matthew Elderfield, announced that the Central Bank will be considering:

■ A systematic rethink of Ireland’s non-UCITS regulatory and supervisory framework. This reflects the imminent implementation of the AIFMD with an assessment of whether it is appropriate to retain existing Irish-specific requirements
■ The establishment of a new category of fund based on the minimum standards required by AIFMD
■ A review of the promoter regime for non-UCITS funds, with the potential for the promoter requirement to be removed

NORTHERN TRUST ACTIONS

As a member of the Irish Funds Industry Association (IFIA), Northern Trust is closely monitoring developments and will communicate any impact to our clients.

12. Proposed amendments to Irish Anti-Money Laundering/Counter-Terrorist Financing Law

OVERVIEW

The Irish government’s proposed amendments to Irish anti-money laundering and counter-terrorist financing measures seek to clarify certain aspects of the 2010 Act. Several key amendments are currently under discussion with the Irish funds industry:

■ A designated person is no longer able to rely on a country’s inclusion in the Irish list of prescribed countries, but must carry out its own assessment of the risk of money laundering or terrorist financing before entering transactions with such a country
■ Changes to identification and scrutiny of complex and large transactions and unusual patterns of transactions that have no apparent economic or visible lawful purpose
■ Requirement for firms to monitor source of wealth and source of funds
■ Changes to ongoing checks to determine if existing investors become politically exposed persons
■ Keeping customer due diligence up-to-date

NORTHERN TRUST ACTIONS

Northern Trust continues to monitor developments closely and is taking part in industry consultations via its membership of the IFIA.

NEXT STEPS

The Department of Finance’s Anti-Money Laundering guidelines, issued in February 2012, may need to be amended for specific sectors. The IFIA has begun to develop sectoral guidance notes for the funds industry.
13. Credit Rating Downgrades and Investments

OVERVIEW

On 29 July 2012, the Central Bank of Ireland (Central Bank) clarified their views relating to the requirements for the credit ratings of counterparties to Irish funds. These ratings are applicable to:

- OTC derivatives (including forward foreign exchange contracts)
- Efficient portfolio management (including securities lending/repurchase agreements)
- Prime brokerage arrangements

The Central Bank indicated that if funds inadvertently breach credit rating limits following credit downgrades:

- The fund and its trustee must consider the issues arising, including their obligations to act in the best interest of the shareholders/unitholders
- The fund, as a priority, should remedy the situation over a reasonable timeframe, taking into account the shareholders/unitholders’ interests
- The fund or its trustee must continually actively monitor the counterparty’s creditworthiness by conducting internal rating assessments on behalf of the affected investment fund
- If the fund decides to remain contracted to a counterparty inadvertently in breach of the Central Bank’s credit rating requirements, the decision should be supported by an internal ratings assessment undertaken on behalf of the affected investment fund
- The fund must inform the Central Bank of (i) the breach, (ii) remediation plan necessitated by the counterparty downgrade, and (iii) the rationale for the proposed approach
- Any new OTC derivative or efficient portfolio management technique must adhere to the Central Bank’s requirements
UNITED STATES

14. Form PF

OVERVIEW

In late 2011, the Securities and Exchange Commission (SEC) adopted a new regulatory filing requirement called Form PF.

Similar in spirit to the reporting requirements in the EU’s Alternative Investment Fund Managers Directive, the filing will be used to review the activity of ‘private fund advisers’; i.e., SEC-registered advisers (irrespective of location) who operate and offer funds exempt from SEC registration through the use of two exemptions under the Investment Company Act of 1940.

At the same time, the CFTC adopted new rules under the Commodity Exchange Act which require commodity pool operators and commodity trading advisors to use Form PF.

KEY IMPACT

The filing is detailed and affects individual advisers based on the composition and size of their private fund business. At a high level, Form PF includes the disclosure of information such as:

- Assets under management (AUM)
- Net asset value (NAV)
- Performance results on a monthly, quarterly and/or annual basis
- Investor information
- Exposure and monthly turnover by asset class
- Liquidity positions financing and investors

The form is divided into four sections. Depending on the type of fund adviser and assets under management, the filer will need to complete different sections. In determining filing thresholds, private fund advisers must aggregate similarly run or “parallel” strategies. Separately managed accounts, and non-US domiciled funds (if marketed or owned by US persons) therefore may fall into the scope of the filing requirements.

NEXT STEPS

As a result of the new reporting requirements, advisers must create a robust cross functional oversight process to gather and validate the required data from multiple sources. We expect to see an increase in demand from investors for insights into the non-public data used to create the filing.

NORTHERN TRUST ACTIONS

Northern Trust is assisting clients with their initial filings, which commenced as early as 30 June 2012. The majority of advisers will need to begin annual or quarterly filings as of 31 December 2012.

We are currently finalising a solution which will both assist clients in collecting the data needed for the filing and in making the filing to the regulators.
**Foreign Account Tax Compliance Act (FATCA)**

View further Northern Trust insights

**OVERVIEW**

Since the publication of the draft regulations and the initial joint statement between the United States and five European jurisdictions (France, Germany, Italy, Spain and the United Kingdom) on 8 February 2012, the United States released further joint statements on 21 June 2012 with Japan and Switzerland. The joint statements announce the United States’ commitment to explore an intergovernmental approach to FATCA implementation.

**Model Intergovernmental Agreement**

The first Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA (Model IGA) was published with a joint communiqué released between the United States, France, Germany, Italy, Spain and the United Kingdom on 26 July 2012.

- Under this Model IGA, FFIs will report directly to their local tax office instead of the US Internal Revenue Service (IRS), and, depending on which version of the IGA is adopted, the United States will reciprocate in collecting and exchanging information on accounts held by residents of those countries.
- Other countries may adopt this Model IGA, or other Model IGAs yet to be released.
- The United Kingdom and the United States signed the first bilateral agreement based on this model on 14 September 2012.

**NEXT STEPS**

The proposed FATCA regulations and the Model IGA indicate a general intent to move the FATCA rules in a direction that may be more practical for financial institutions to implement. However, the proposed regulations are complex and there are several outstanding issues on how FATCA will be implemented across jurisdictions.

**Draft Modified Forms W-8**

- The IRS has issued preliminary draft copies of the modified Certificate of Status of Beneficial Owner for U.S. Tax Withholding—Form W-8 BEN for individuals and Form W-8-BEN-E for legal entities. The IRS has also issued preliminary drafts of Forms W-8ECI and W-8IMY.
- The draft forms have been re-designed to accommodate the proposed FATCA regulations; however, they do not reflect comments on the proposed rules currently under consideration by the IRS and US Treasury.
- The draft forms are expected to change before the final forms are issued. New W-8 forms are expected to become effective on 1 January 2013 at the earliest. Draft instructions have not been released.

The US Treasury and IRS have stated their intention to publish final FATCA rules by early autumn 2012.

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**Impacts**

- Foreign financial institutions (FFIs) including non-US banks, brokers, custodians, investment funds, retirement plans, insurance companies; and the US financial institutions that make payments to FFIs
- Institutional investors that will need to provide evidence of compliance to financial service providers

**Key takeaway**

- All institutional investors will need to provide evidence of FATCA compliance to financial service providers.
- Non-US financial institutions (e.g., banks, custodians, investment funds, insurance companies identified as FFIs under FATCA) will need to conduct due diligence on account holders, withhold from non-compliant account holders, and report on US account holders or qualify for an exemption from those requirements.
NORTHERN TRUST ACTIONS

In the United Kingdom, Northern Trust is working with HMRC through the British Bankers Association and other industry bodies such as the Investment Management Association’s (IMA) FATCA Implementation Working Group, to agree an appropriate method of submitting the required FATCA reporting.

Globally, Northern Trust is participating in industry organisations, meeting with the IRS, and sharing perspectives with other industry participants to identify and resolve challenges. Northern Trust is modifying systems and operations to support Northern Trust’s FATCA obligations and to assist fund managers in meeting FATCA obligations of their funds.
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