



Newsletter 01/2015: 30 January, 2015

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Welcome

To blow the whistle or not blow the whistle

In Ireland, 2014 was definitely the year where whistleblowing was at the forefront of corporate attention and indeed media focus. Who can forget the adverse publicity that the 'Garda Whistleblower' debacle caused not only in the column inches but also right up to Dáil debates.

With regards to regulated entities, your firm not only has to think about media adverse publicity but also the possible requirement to inform the Central Bank of Ireland. As the annual PCF compliance filings fall due, we thought this was a good opportunity to look again at this area.

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The Central Bank (Supervision and Enforcement) Act 2013 codified certain whistleblowing protections that regulated entities must be in compliance with. Firstly there has to be protection from civil liability and victimisation for all individuals and/or groups who blow the whistle on poor practices, breaches or errors. Indeed a company or individuals may be fined up to €250,000 and/or imprisoned if any victimisation occurs. However, the area of most concern for pre-approval controlled functions (PCFs) is the mandatory whistleblowing requirements for breaches of financial services legislation that would be of interest to the Central Bank of Ireland. However, this is a very subjective area and firms really need to get to grips with the materiality test in determining whether the whistle should be blown or not.

Firstly, for breaches of the Consumer Protection Code that have not been fixed within 40 business days, these must be reported to the Central Bank within 5 business days. The Central Bank has determined the length of time to rectify the situation has the determinant of seriousness. However, for all other financial services legislation, the time factor to rectify the breach would only be one part of considering whether the breach is material. Therefore, firms should construct a framework in their whistleblowing procedure on how they interpret materiality and the indicators used to determine if a breach is material or not.

Compliance Ireland advises that materiality should be defined as 'A breach or deviation of any legal or regulatory requirement that alter the sections legal effect meaning or interpretation'. Basically what this means is look at what the section is trying to achieve and determine if the breach will mean that the outcome cannot be achieved. Once this has been done, the firm could possibly look at the following indicators:

- The frequency and duration of the non-compliance. Was this a once off-event or has it been on-going over a significant period. Also it should be reviewed as to whether the breach had been identified previously but is still on-going.
- The extent to which the non-compliance departs from the required standards. What this means is has the outcome been achieved but not in the timeframe required?
- Had the issue been raised by the Central Bank previously in a PRISM inspection or raised through Dear CEO letters as a result of a thematic inspection at other firms?
- Is there a direct financial loss to the firm and or its customers? • Was it a wilful breach or just an oversight?
- What is the impact of non-compliance such as reputational, financial loss etc.? Something that could possibly be looked at is if there have been enforcement actions by the Central Bank of Ireland for

similar breaches? If another firm has been sanctioned, the thinking of the Central Bank is that all other firms should learn from their mistake.

- Does the breach indicate serious or systemic weaknesses of systems and controls i.e. is there a procedure in place but just not being followed? Is there a requirement for training or retraining on this procedure to ensure that everyone is aware of it and will follow it in the future.

PCFs should be mindful that the Central Bank will take into account the following in determining the severity or a sanction (if any) if a firm breaches financial services legislation:

- (a) How quickly, effectively and completely the matter was brought to the Central Bank's attention
- (b) The degree of co-operation the Central Bank is provided with during the examination of the contravention
- (c) Any remedial steps taken since the contravention was identified
- (d) Likelihood that the same type of contravention will reoccur if no administrative sanction is imposed
- (e) Whether the contravention was admitted or denied by the firm.

In conclusion, our advice is to inform all PCFs of their mandatory whistleblowing obligations. A review of your whistleblowing charter and procedure should be undertaken to determine if it is fit for purpose and includes the mandatory whistleblowing regime. All employees should receive training on how the regime works and assured that if they do escalate any issue they will never be victimised or bullied. Remember to close one's eyes to the problem will only make things worse, if not make you an actual accomplice.

Financial Crime

Weaving Capital (UK) Limited founder convicted of fraud **Lessons in Corporate Governance**

Ulf Magnus Michael Peterson, the founder of Weaving Capital (UK) Limited and former investment manager of the Dublin-administered, ISE-listed Weaving Marco Fund, has been found guilty of eight counts of fraud, forgery, false accounting and fraudulent trading in relation to the collapse of his Cayman-domiciled hedge fund in March 2009.

His trial took place in Southwark Crown Court in London and he was sentenced to 13 years imprisonment on 23 January 2015.

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Between 2003 and 2009 Mr Peterson misled customers into investing \$780 million into the Macro Fund, artificially inflating the fund's investment performance by setting up swap trades with another offshore company (Weaving Capital Funds Ltd.) that he owned and controlled. The subsequent collapse led to net losses for investors of approximately \$536 million. The company traded on the Irish Stock Exchange and the prosecution was based on a Serious Fraud Office investigation which involved assistance from authorities in 8 other jurisdictions.

While this is one of the first hedge fund prosecutions of its kind to arise out of the 2008 financial crisis it is not the first time Weaving Macro Fund has been in the headlines. The verdict follows a judgment in the Cayman courts in 2011 against the former directors of the Macro Fund in which they were found to be wilfully negligent. The two directors, Stefan Peterson and Hans Ekstrom, were close relatives of Mr. Peterson. While they purported to meet on a quarterly basis no real discussion or oversight of the Fund ever took place. The directors effectively took on an administrative role by simply signing papers put before them by Magnus Peterson. They never sought reports or any other information pertaining to the fund's financial condition. Their lack of involvement with the reality of the fund meant they were oblivious to the fact that Weaving Capital Funds Ltd was the counterparty on the (falsified) Interest Rate Swaps.

The facts of the case prompted the Court to undertake a review of the most basic and fundamental standards expected of any director and not just those involved in funds. There was some focus on the duty to act with reasonable care, skill and diligence. It concluded that the directors effectively did nothing and continued to do nothing for 6 years. As a result they were held liable for a total of \$111 million in irrecoverable redemption payments made during an extended period of trading based on falsely inflated NAV calculations.

The case stands as a reminder of the consequences of poor corporate governance and served to illustrate a

number of practical steps directors are required to take to demonstrate fulfilment of their duties. These included:

- Retention of oversight when delegating functions to third parties,
- keeping proper minutes of board meetings showing the content of discussions,
- understanding the nature of the services to be provided by individual service providers,
- getting, reading and reviewing all relevant reports
- understanding the financial position of the Company
- not assuming reports contain all of the information required or that they assure the Company is being run properly,
- do not become a rubber stamp and apply their mind to documents for signing.

The lessons to be learned from the Cayman judgment remain relevant and take on even greater significance when the Companies Act 2014 comes into focus here in Ireland. In a sense, the Irsih legislation has effectively incorporated these lessons into Irish law. The Act helpfully sets out a list of director's duties in Part 5 Chapter 2 which include a list of Fiduciary duties under s.228, the requirement to include a compliance statement in the Director's Report under s.225 and an overall duty to ensure that the Act is complied with by the company under s.223.

You can view the full Act [here](#)

Banking

David Duffy to step down as CEO of Allied Irish Bank

David Duffy has announced to the Board of AIB that he intends to step down as Chief Executive and Executive Director later this year. Mr Duffy is expected to take up the position of CEO of Clydesdale Bank, part of the National Australia Banking Group.

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Following the announcement, Minister Noonan stated *"Under the stewardship of Mr Duffy, AIB has undergone a major transformation...and is now operating to support economic growth and jobs in the Irish economy...The bank has been returned to profitability and passed the recent ECB Comprehensive Assessment. Mr Duffy has built a strong and capable management team in the bank and the outlook for the bank as stated in its most recent trading update to the market is very positive."*

With a view to the future, however, the Irish Times reported the view of Merrion Capital's Ciaran Callaghan that Mr Duffy's resignation *"is likely to be an unwelcome development in the government's sales plan"*, and highlights the difficulties of retaining a stable management team in nationalised institutions. Mr Duffy will remain in position at AIB to support the board in identifying his successor.

With the government imposed salary cap of €500,000 in place at the bank, the search for a replacement will be interesting considering the improvement in market conditions since the imposition of the salary cap in 2009. Will a capped salary of €500,000 be sufficient to attract a suitable replacement and maintain the progress of AIB, or will it lead to stopgap candidates regarding such positions as a mere apprenticeship to be endured for a short period in order to open the way to bigger and better opportunities elsewhere? Expect much press commentary in the near future about *"the need to pay for talent"* and the *"greed and rapacity of bankers"* as opposing commentators air their positions.

Europe

Capital Requirements Regulatory Updates

The European Banking Authority (EBA) has issued guidelines on materiality, proprietary, confidentiality and on disclosure frequency. These are contained in a final draft Regulatory Technical Standards (RTS) on the compliance of institutions with the requirement for a countercyclical capital buffer and data waiver

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[Guidelines on materiality, proprietary, confidentiality and disclosure frequency](#)

The Guidelines provide common flexible frameworks that cover

- The process that institutions should follow in their assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of the CRR more frequently than annually
- The criteria that institutions should consider in the assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of the CRR more frequently than annually
- The information that institutions should provide when using the disclosure waivers or choosing to disclose more frequently.

Click [here](#) to see the full Guidance document.

[Final Draft RTS on the compliance of institutions with the requirement for a countercyclical capital buffer](#)

The RTS set out two disclosure templates that will harmonise the information available to the general public on the institution-specific CCB and the geographical location of the exposures determining this buffer.

This RTS contains the two tabular disclosure templates to be used in accordance with disclosures under Article 13(1) and Article 440 of the CRR.

Click [here](#) to see the full Final Draft RTS.

[Final Draft RTS on data waiver permission](#)

Features of the RTS:

- Institutions may request, when implementing the IRB Approach, permission from Competent Authorities to use data covering a period of two rather than five years for probability of default, own-loss given default and own-conversion factor estimates for certain type of exposures.
- To limit the potential implications for the calculation of own funds requirements, the EBA has introduced limiting conditions for the use of the data waiver, namely by excluding low-default portfolios as well as restricting the application of the data waiver to a limited proportion of assets.
- The requirements also highlight the importance of applying an appropriate margin of conservatism to parameter estimates as well as ensuring that there is an enhanced data vetting process. The requirements also highlight the importance of applying an appropriate margin of conservatism to parameter estimates as well as ensuring that there is an enhanced data vetting process.
- It has been concluded that after five years of IRB implementation by institutions, sufficient data history should already be available. Therefore, permission for data waiver should not be allowed after five years have elapsed from the first permission granted to an institution.
- These RTS should apply only to new data waiver permissions to be granted by the competent authorities.

Click [here](#) to see the full Final Draft RTS.

Consumer Protection

New Consumer Protection Legislation for Credit Servicing Firms

The Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 was published on the 14th January 2015 and is entitled an Act to provide for the protection of certain borrowers who are parties to credit agreements in respect of which credit servicing firms undertake certain services. Its publication follows the Consultation Paper on the Regulation of Loan Portfolio Buyers that was issued by the Department of Finance in July 2014.

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The Act will require amendments to the Central Bank Acts and the effect of the amendments to Section 28 of the Central Bank Act 1997 will be to regulate the activity of 'credit servicing' and the 'credit servicing firms' engaged in such activity so that the borrowers retain the protections that they have before a loan book is sold.

Part VIIB of the Central Bank Act 1942 will be amended to ensure that relevant borrowers whose credit agreements are being serviced by an authorised credit servicing firm are considered eligible consumers for the purposes of the Financial Services Ombudsman. Section 3 of Consumer Credit Act 1995 (application) will also be amended to ensure that the relevant Central Bank Codes will apply to credit union credit that is sold to an unregulated entity.

Credit servicing is defined broadly in the Bill and includes the following activities:-

- a. notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,
- b. taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,
- c. managing or administering any of the following:
 - i. repayments under the credit agreement;
 - ii. any charges imposed on the relevant borrower under the credit agreement;
 - iii. any errors made in relation to the credit agreement;
 - iv. any complaints made by the relevant borrower;
 - v. information or records relating to the relevant borrower in respect of the credit agreement;
 - vi. the process by which a relevant borrower's financial difficulties are addressed;
 - vii. any alternative arrangements for repayment or other restructuring;
 - viii. assessment of the relevant borrower's financial circumstances and ability to repay under the credit agreement, or
- d. communicating with the relevant borrower in respect of any of the matters referred to in paragraphs (a) to (c).

You can read the full text of the Bill [here](#)

Update to the Consumer Protection Code

Following on from the letter issued by the Head of Consumer Protection in the Central Bank on 21 November 2014, The Consumer Protection Code 2015 has received a further update, Chapter 13, which became applicable from 1 January 2015 on 'Additional requirements for Debt Management Firms'

Following on from the letter issued by the Head of Consumer Protection in the Central Bank on 21 November 2014, The Consumer Protection Code 2015 has received a further update, Chapter 13, which became applicable from 1 January 2015. Chapter 13, titled ' Additional requirements for Debt Management Firms' gives Debt Management Firms obligations under the following areas:

- Provision of Information to the Consumer and the template to be used.
- General requirements for services provided to a Consumer and additional mandatory statement to be included.
- Restrictions imposed on the Debt Management Firm.
- Knowing the Consumer and Suitability .
- Negotiation permitted with a consumer and the conditions imposed on the Debt Management Firms.
- Conditions on when the Debt Management Firm must send a consumer Statements and content of such statements.

For a full overview of the new Chapter 13, please click [here](#).

Training

Training Schedule Feb-Jun 2015

To kick off the new year we are offering 5 places in our February Implementing Fit & Proper Course at a discounted price of €200 per person!

Contact our Training Manager [HERE](#) to reserve your place or to discuss discounts for booking multiple

courses.

FEBRUARY - JUNE 2015 TRAINING SCHEDULE

2015 Training Dates have now been finalised and we are accepting bookings.

Click on the links for more detailed information on any one of our courses.

FEBRUARY

- 17th Feb, Tues - [Anti-Money Laundering Refresher Course](#), Brief
- 19th Feb, Thurs - [Capital Requirements Directive III](#), Full Day **LIMITED AVAILABILITY**
- 24th Feb, Tues - [Implementing Fit & Proper in your Business](#), Brief
- 26th Feb, Thurs - [Anti-Money Laundering/Counter Terrorist Financing](#), Full Day **LIMITED AVAILABILITY**

MARCH

- 3rd Mar, Tues - [Corporate Governance](#), Half Day
- 4th Mar, Wed - [Director's Training - Anti-Money Laundering/Counter Terrorist Financing](#), Brief
- 5th Mar, Thurs - [Director's Duties and Corporate Governance](#), Full Day
- 10th Mar, Tues - [Introduction to Financial Services Regulation in Ireland](#), Half Day
- 11th Mar, Wed - [Complaints Handling & Treating Customers Fairly](#), Half Day
- 12th Mar, Thurs - [AML in Practice: Implementation of Current Legislation and Guidance](#), Brief
- 18th Mar, Wed - [Consumer Protection Code - Advertising Requirements](#), Half Day
- 19th Mar, Thurs - [Risk-Based Compliance Monitoring for Financial Institutions](#), Full Day
- 24th Mar, Tues - [Minimum Competency Code](#), Half Day
- 25th Mar, Wed - [Ethics](#), Brief
- 26th Mar, Thurs - [Capital Requirements Directive III - For Investment Firms](#), Full Day

APRIL

- 8th Apr, Wed - [E-Money Directive](#), Brief
- 9th Apr, Thurs - [The Role of the Compliance Officer - Banks and Investment Firms](#), Full Day
- 14th Apr, Tues - [Consumer Protection Code 2012](#), Half Day
- 15th Apr, Wed - [Central Bank Inspections & Enforcement](#), Half Day
- 16th Apr, Thurs - [Anti-Money Laundering/Counter Terrorist Financing](#), Full Day
- 21st Apr, Tues - [PRISM](#), Lunch Brief
- 22nd Apr, Wed - [Establishing the Internal Audit Function](#), Half Day
- 23rd Apr, Thurs - [Understanding Solvency II](#), Full Day
- 28th Apr, Tues - [Data Protection and How to Conduct a Data Protection Audit](#), Full Day
- 29th Apr, Wed - [Code of Conduct and Mortgage Arrears](#), Brief
- 30th Apr, Thurs - [The Role of the Compliance Officer - Insurance Firms](#), Full Day

MAY

- 6th May, Wed - [AML in Practice: Implementation of Current Legislation and Guidance](#), Brief
- 7th May, Thurs - [Understanding MiFID](#), Full Day
- 12th May, Tues - [Corporate Governance](#), Half Day
- 13th May, Wed - [Consumer Protection Code - Advertising Requirements](#), Half Day
- 14th May, Thurs - [Implementing USITS IV](#), Half Day
- 19th May, Tues - [Complaints Handling & Treating Customers Fairly](#), Half Day
- 20th May, Wed - [Payment Services Directive](#), Brief
- 21st May, Thurs - [PRISM](#), Lunch Brief
- 26th May, Tues - [Implementing the Directive for Alternative Investment Fund Managers \(AIFM\)](#), Half Day
- 27th May, Wed - [Anti-Money Laundering Refresher Course](#), Brief
- 28th May, Thurs - [Director's Training - Anti-Money Laundering/Counter Terrorist Financing](#), Brief

JUNE

- 3rd Jun, Wed - [Ethics](#), Brief
- 4th Jun, Thurs - [Introduction to Financial Services Regulation in Ireland](#), Half Day
- 9th Jun, Tues - [Implementing Fit & Proper in your Business](#), Brief
- 10th Jun, Wed - [Understanding Funds in Ireland](#), Half Day
- 11th Jun, Thurs - [Directors Duties and Corporate Governance](#), Full Day
- 16th Jun, Tues - [Developments in MiFID 2](#), Brief
- 17th Jun, Wed - [Consumer Protection Code 2012](#), Half Day
- 18th Jun, Thurs - [Data Protection and How to Conduct a Data Protection Audit](#), Full Day
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How to Make a Booking

Click on the link to the course you want to book and ensure your place today by scrolling down and booking through PayPal.

Alternatively, you can make a booking by sending an email to bookings@complianceireland.com containing the following information:

- your contact details
- the name and date of the course that you would like to attend
- the attendee(s) name(s)
- the name of the person that the invoice should be addressed to
- any reference/cost centre/purchase order number that you would like stated on the invoice

We will follow up your booking by sending out an invoice.

Bespoke training:

It may be more cost-effective and time-efficient to have your staff trained at your premises rather than sending them out to external courses. As well as our public training courses, **Compliance Ireland** regularly provides bespoke training to firms around the country. The benefits of bespoke training include:

- we can tailor content to your company/industry requirements
- we can tailor content to focus on specific topics within a subject area
- we can help you ensure that you comply with mandatory/regulatory staff training requirements
- reduce costs by running course from your offices or for smaller groups from our offices
- reduce costs by printing off course content

For more information, see our website - <http://www.complianceireland.com/> or contact us: email@complianceireland.com

Terms & Conditions:

Our Terms and Conditions and Cancellation Policy ('Terms') are located [here](#). Please read the Terms before making your booking. A link to the Terms appears on each webpage advertising a course/Event. Please note that **Compliance Ireland** reserves the right to alter the content and/or cancel scheduled courses/Events. Where **Compliance Ireland** cancels a course/Event a full refund will be made. All bookings must be paid for in advance unless agreed otherwise. Please also see our Privacy Policy/Statement by clicking [here](#).

Seminar For Credit Unions

Compliance and Risk Seminar for Credit Unions

**Compliance Ireland Invite you to the Rochestown Park Hotel, Co Cork
Friday 27th March 2015**

The Credit Union Act 1997, as amended requires Credit Unions to prepare and submit an Annual Compliance Statement to the Central Bank within two months of the financial year end. In order to facilitate the preparation of this Compliance Statement, Compliance Ireland has designed and tailored **two half day courses** for Credit Union Managers, Compliance Officers and Risk Officers which will look at Compliance and Risk for Credit Unions.

For more information and booking, please click [Here](#).
Closing Date for Bookings - 20th March 2015

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