



Legal Update

EMIR: Central Bank enforcement action

The Central Bank of Ireland (the “Central Bank”) recently announced that it had issued a six figure fine to an investment fund authorised by it in Ireland for failure to comply with filing obligations applicable under the EMIR regulations. This is the Central Bank’s first enforcement case under the EMIR Regulations. While the relevant ICAV is the entity subject to the fine, the Central Bank notes the commitment from the Board of the ICAV to ensure that investors are not financially disadvantaged by the financial penalty.

Background

The relevant ICAV was authorised as a UCITS in Ireland and its board had appointed a third-party management company. This management company in turn delegated responsibility for investment of the assets of the ICAV, including the ICAV’s reporting obligation under EMIR, to an investment manager.

The Issue

Article 9(1) of the European Markets Infrastructure Regulation (EMIR) requires details of any derivative contracts to be reported to a registered trade repository no later than the working day following the conclusion of the contract. The ICAV admitted that it failed to report 200,640 derivative trades entered into between January 2018 and May 2020 by one of its sub-funds. The Central Bank enforcement notice notes that the delegations to

the management company and investment manager, respectively, did not remove the ICAV’s legal responsibility to comply with its regulatory obligations or the Board’s ultimate responsibility for all activities of the ICAV.

The Fine

A fine of €275,000 was imposed on the ICAV, which was reduced by 30% to €192,500 as allowed for by the settlement discount scheme provided for in the EMIR Regulations Settlement Scheme.

How Clerkin Lynch can Help

The asset management team at Clerkin Lynch LLP provides timely updates on all aspects of regulatory developments relating to the funds industry in Ireland and works with our Litigation team to defend clients, including in enforcement cases, as and when necessary.



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