REGULATION what does it mean for Ireland?

Deirdre Power, Partner – Investment Management Advisory, Deloitte and Patrick Rooney, Manager – Investment Management Advisory, Deloitte discuss.

Regulatory change is now the single biggest issue facing fund administrators according to the Deloitte Fourth Annual Global Fund Administration Survey. While the origins of the Irish funds industry lay in sweeping regulatory change that took place over twenty years ago, today we are in the midst of an entirely different regulatory wave. With this in mind, we discuss some of the key regulatory changes impacting the Irish funds industry.

AIFMD - a golden opportunity or compliance burden?

The final text of the Alternative Investment Fund Managers Directive (AIFMD) is more workable than earlier drafts but challenges remain, particularly for asset managers selling offshore funds in Europe. Non-EU managers seeking to distribute in the EU will need a member state of reference and an Irish self-managed QIF could provide the ideal compliance solution.

The AIFMD Passport could emerge as a strong brand to mirror UCITS in the alternatives world and the phasing out of private placement from 2018 points to the imminent re-evaluation of distribution strategies. Ireland, as the global leader in the servicing of alternative investment funds, is the obvious choice for onshore hedge fund platforms.

On the compliance side, depositaries will face increased liability leading to reviews of existing sub-custody arrangements and a reappraisal of costs and fees. While the European Securities and Markets Authority (ESMA) recently clarified that a third party providing the net asset value calculation is not the valuation agent, asset managers may look to fund administrators to take on this role which carries a new burden of liability.

As managers seek to outsource complex, operationally intensive processes under AIFMD there is clearly an opportunity for third party administrators to provide more value-added services to their clients. Fund administrators may need to invest in additional resources, expertise and technology to provide these services and are also likely to face additional scrutiny under new requirements and increased outsourcing.

UCITS IV – living up to expectations?

UCITS IV aims to enhance cross border efficiencies and was initially estimated to yield cost saving benefits of more than €6 billion. However, with compliance costs recently estimated at €1 billion and little sign of fund consolidation, has UCITS IV become a false dawn?

Originally an industry inspired directive, UCITS IV became subject to increasing mandatory requirements which are still being digested. While simplistic in concept, the two page Key Investor Information Document (KIID) has necessitated a complex solution involving data preparation, tracking/updating, production and distribution. KIID support is a highly specialised area and may offer little margin for many fund administrators relative to cost. Other new requirements such as organisational rules, the code of conduct and VaR model validation have also added costs.

Looking at the key efficiency enhancing provisions, several impediments remain. Firstly, the majority of EU member states have yet to implement UCITS IV and although ESMA recently issued guidance to deal with these situations, there is no perceived first mover advantage and asset managers are waiting for the dust to settle before making any strategic decisions.

Both the Management Company Passport and the master-feeder structure should generate savings from lower operational, distribution and marketing costs. While Ireland is well positioned with its tax framework, complex tax implications in other countries remain a barrier to cross jurisdictional reorganisations and mergers.

UCITS IV does present asset managers with genuine efficiency opportunities but these must be carefully explored. This requires a detailed cost-benefit analysis and such strategic reviews are likely to happen over the longer term. With a highly favourable tax and regulatory environment and an abundance of local expertise, Ireland is well positioned to win UCITS IV business when the opportunities arise.

FATCA – time to prepare

The far reaching scope and onerous nature of the Foreign Account Tax Compliance Act (FATCA) provisions have caused much consternation across the industry. FATCA enforces reporting of US held foreign accounts by mandating 30% withholding on US source income (including gross sales proceeds) should any Foreign Financial Institution or account holder not comply. Unlike AIFMD, the provisions of FATCA have not been softened to any great extent since its original publication. The focus is now firmly on implementation with asset managers looking to their service providers for assistance.

FATCA implementation will require a cross functional approach involving tax, legal and compliance, operations, IT, investor services and distribution. Significant costs will be incurred in developing systems and processes to identify customer accounts, obtain customer details, report account activity, track US payments and support withholding on 'recalcitrant' account holders and non-compliant entities. The heavily intermediated nature of the European funds industry and the sheer number of parties involved adds a further layer of complexity. Now is the time to begin comprehensive planning and project management in order to ensure FATCA readiness by 2013.

The regulatory horizon

These are just some of the regulatory measures that will affect the funds industry in the years to come – others include UCITS V, Solvency II, corporate governance, FIN 48, MiFID II and Dodd Frank.

The ways in which fund administrators navigate all this regulatory change will ultimately impact their market positioning and client perceptions.

Fund administrators can gain a genuine competitive advantage from this regulatory wave by anticipating client needs and developing bespoke service offerings. ◆