

An aerial photograph of Dublin, Ireland, showing a dense urban landscape with a mix of historic and modern buildings. The Spire of Dublin is visible on the left. In the foreground, a bridge spans a river, with several yellow and blue double-decker buses and a tram on the street below. The sky is clear and blue.

Matheson

# A Guide to Euronext Dublin Continuing Obligations for Investment Funds



## About Matheson

Matheson LLP (Matheson) was established in 1825 in Dublin, Ireland. Now with offices in Cork, London, New York, Palo Alto and San Francisco, more than 800 people work across Matheson's six offices, including 120 partners and tax principals and over 540 legal, tax and digital services professionals. Matheson services the legal needs of internationally focussed companies and financial institutions doing business in and from Ireland. Our clients include over half of the world's 50 largest banks, 7 of the world's 10 largest asset managers, 7 of the top 10 global technology brands and we have advised the majority of the Fortune 100.

## International Listing Services

Matheson's experienced International Listing Services team offers a range of international listing services for both funds and debt securities. The team provide a highly personalised service advising Irish and international clients on all types of fund and debt structures, including exchange traded funds (ETFs), UCITS, AIFs, hedge funds, common contractual funds, exchange traded commodities (ETCs), high yield bonds, sovereign bonds, asset-backed securities and Islamic finance offerings. Matheson is authorised by Euronext Dublin as a listing agent for funds and debt products. In addition to Euronext Dublin, the team are experienced in working with the Luxembourg Stock Exchange, the Vienna Stock Exchange, the Cayman Islands Stock Exchange, the International Stock Exchange, the London Stock Exchange, Euronext Milan (previously Borsa Italiana) and Euronext Amsterdam on the admission of ETF and ETC products to trading.

## Services

Matheson's International Listing Services will provide guidance on all stages of the listing process from initial review to final listing. We advise on all aspects of the fund's ongoing listing obligations. Our services include:

- Advising on the suitability of an Irish or international investment fund to list on Euronext Dublin.
- Advising on the best Euronext Dublin market to choose for the listing. Since April 2016, Euronext Dublin offers the choice of its regulated market or its Global Exchange Market (GEM)<sup>1</sup>, which is a multilateral trading facility.
- Advising in the preparation of the listing particulars (offering document) to be used for the listing, taking into account the relevant Euronext Dublin disclosures.
- Submitting the formal application to Euronext Dublin for listing and advising on any comments raised by Euronext Dublin and how to resolve them.
- Advising on the ongoing obligations associated with maintaining a listing, taking into account the relevant European directives applicable to them, such as the Market Abuse Regime, the EU Prospectus Regulation and EU Transparency Directive.
- Applying to Euronext Dublin for ISIN, FISN, CFI and LEI codes on behalf of the fund.

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<sup>1</sup> The GEM is not a "regulated market" as defined under the Directive 2014/65/EU on Markets in Financial Instruments.

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## 1 Introduction

A fund that is listed on Euronext Dublin is required to comply with Euronext Dublin's listing requirements for the duration of the fund's listing. Additionally, as a result of the fund's listing on Euronext Dublin, the fund is required to adhere to the requirements of various European Union (EU) Directives which are implemented in Ireland and applicable to listed securities in the EU<sup>2</sup>.

These obligations are imposed and upheld by Euronext Dublin in order to ensure the maintenance of an orderly and transparent market in the shares of the funds that are admitted to listing on Euronext Dublin, to ensure the ongoing suitability of funds for listing, to protect investors' interests and to ensure that all relevant information is disseminated to the public without delay.

Any material changes to the operations of a listed fund will require an announcement to be released, and in some cases, the proposed changes may also require the prior approval of Euronext Dublin or existing unitholders. Matheson International Listings will advise and assist in the preparation of any such announcements.

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<sup>2</sup> Certain EU Directives do not apply to funds listed on Euronext Dublin's GEM, eg, Statutory Audit Directive, Prospectus Regulation and Transparency Directive.

## 2 Annual Report and Accounts

Euronext Dublin requires that listed funds produce an audited annual report and accounts each year. The annual report and accounts must be published and filed with Euronext Dublin as soon as possible, but in any event within six months of the end of the period to which the relevant report and accounts relate.

In exceptional circumstances Euronext Dublin may, at their discretion, grant an extension of the publication and filing deadline. If an extension may be required please contact Matheson International Listings as soon as possible so we can make an application for extension on the listed fund's behalf in advance of the filing deadline.

A fund's annual report and accounts must:

- Be prepared in accordance with the listed fund's national law.
- Have been independently audited and reported on, in accordance with the auditing standards.
- If the fund has subsidiary undertakings, include any such subsidiaries, either in single or consolidated form, or both, where one form contains significant additional information not set out in the other.
- If the fund is a feeder fund the fund must provide the annual report and accounts for both the fund and the master fund, as if the master fund were itself listed.
- If the listed fund is a sub-fund of an umbrella, comprise the accounts for the umbrella fund as a whole, including all sub-funds, save where a sub-fund benefits from a legal segregation of its assets from the liabilities of other sub-funds within the umbrella.

The annual report and accounts of the fund must include the following items:

- A balance sheet, income statement and explanatory notes.
- A commentary by the directors or the investment manager on the results for the period under review<sup>3</sup>.
- The identity of the directors, specifying which act as independent non executive directors<sup>4</sup>.
- Details of the interests in the units held by any legal entity appointed as investment manager disclosed to the listed fund.
- An investment portfolio analysis (IPA) providing for a comprehensive and meaningful analysis of all investments held at the end of the financial period being audited<sup>5</sup>.

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<sup>3</sup> Does not apply to listed funds authorised by the Central Bank of Ireland (CBI)

<sup>4</sup> Does not apply to listed funds authorised by the CBI

<sup>5</sup> Does not apply to listed funds authorised by the CBI

## 2 Annual Report and Accounts (cont.)

The IPA should include the following detail<sup>6</sup>:

- market value of each investment;
- the percentage of gross or net assets of the listed fund which the investment represents;
- name of the issuer or counterparty;
- the type of security; or
- the strategy, or the broad industrial or commercial sector and geographical area, as applicable.

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<sup>6</sup> If the values of any securities has been based on the investment manager's or the directors' estimate of fair value, this should be stated.

### 3 Notifications Relating to Capital

A listed fund must notify a Regulatory Information Services (RIS)<sup>7</sup> without delay of the following information relating to its capital:

#### Alterations to Capital Structure

(a) Any proposed change in its capital structure including the structure of its listed debt securities.<sup>8</sup>

#### Changes of rights attaching to listed Units

(b) Any change in the rights attaching to any class of listed units (including any change in the terms of or in the rate of interest carried by a debt security) or to any units into which the listed units are convertible; and

#### Issues affecting conversion rights

(c) The effect, if any, of any issue of further units on the terms of the exercise of rights under options or warrants and convertible securities.

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<sup>7</sup> RIS means an electronic information dissemination service permitted by Euronext Dublin which includes the Companies Announcement Office of Euronext Dublin. Where a listed fund discloses information directly to a RIS, it must simultaneously notify the CAO of Euronext Dublin.

<sup>8</sup> This does not apply to issues and redemptions in the normal course of business, as described in the fund's listing particulars.

## 4 Notifications of Interests in Units

A listed fund must notify a RIS, without delay, of the following information relating to interests in units, of which the listed fund, its directors or investment manager are aware and where such interests vary from date of first and subsequent notification. Such information should be updated at least on a six monthly basis:

- Any person which would be treated as a controlling unitholder<sup>9</sup>, stating the name of the person and the amount of that person's interest<sup>10</sup>.
- Where any listed fund is subject to the Companies Act 2014, any information disclosed to it in accordance with sections 1047-1062 (incl) and 1069 of the Companies Act 2014.

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<sup>9</sup> A controlling unitholder is considered to be a person entitled to exercise or to control the exercise of 30% or more of the voting rights of a listed fund or is able to control the appointment of directors who are able to exercise a majority of votes at board meetings of the listed fund.

<sup>10</sup> This notification requirement does not apply to funds domiciled in Ireland.

## 5 Notifications of Dealings by the Investment Manager

A listed fund must notify a RIS immediately of any change in the holding of units of the listed fund by the legal entity appointed as investment manager to the listed fund.

Such notification must include the following information:

- The date on which the listed fund became aware of such holding.
- The date on which the transaction giving rise to the change was effected.
- The price, amount and class of the units concerned.
- The nature of the transaction and the nature and extent of the person's interest in the transaction.
- The number of units and percentage holding of the person following the transaction.
- Details of any options in the listed units granted to the person.

For the avoidance of doubt, a listed fund is only required to notify such information of which it is aware, or becomes aware; however, a listed fund must take appropriate steps to inform the relevant entity that they must disclose to the listed fund any changes in their holding of units and to provide the listed fund with the information listed above.

## 6 Notification of Director Changes or Change of Director Function

A listed fund must notify a RIS of any appointment or resignation of a director or a material change of any existing director's functions. When making a notification in relation to the appointment of a director the following information must be provided in the notification submitted to the RIS:

- A summary of the director's executive responsibilities and function, if any, during at least the five year period prior to the date of the notification.
- Disclosure on whether the newly appointed director has:
  - had any unspent convictions in relation to indictable offences;
  - been a director of any company or partnership which, while they were a director with an executive function or partner at the time of or within the 12 months preceding such events, been declared bankrupt, went into receivership, liquidation, administration or voluntary arrangements;
  - been subject to any official public incrimination and / or sanctions by statutory or regulatory authorities (including designated professional bodies); or
  - been disqualified by a court from acting as a director of a company or from acting in the management or conduct of affairs of any company.
- If no such information is to be disclosed in relation to the newly appointed director an appropriate negative statement must be included in the notification.

## 6 Notification of Director Changes or Change of Director Function (cont.)

For a listed fund domiciled outside of Ireland, the notification must include a statement to confirm whether the newly appointed director is acting in an independent capacity. Listed funds domiciled outside of Ireland must ensure that at all times there are at least two independent directors appointed to the board of the listed fund.

A director will be considered independent where they:

- have no executive function with the investment manager, investment advisor and / or affiliated companies; and / or
- have an executive function with any other service provider to the listed fund but are not responsible for carrying out work on behalf of the listed fund; and
- have the ability to exercise decision making and judgement on behalf of the listed fund and the listed fund's unitholders as a whole objectively, reasonably and independently of the views of parties related to the listed fund and any external parties.

All directors of a listed fund must accept responsibility collectively and individually for the listed fund's ongoing compliance with Euronext Dublin listing requirements.

Except where a listed fund is required under the law of the jurisdiction in which it is domiciled to appoint a corporate director, no director may be an entity with limited liability.

Each of the directors of a listed fund must be free of conflicts between duties to the listed fund and duties owed by them to third parties and other interests, unless it can be demonstrated to Euronext Dublin that suitable arrangements are in place to avoid detriment to the listed fund's interests or its unitholders as a whole.

## 7 Notifications Relating to the Listed Fund's Operations

### Notifications Relating to the Operations of Listed UCITS Funds (Only)

A listed UCITS fund must notify an RIS, without delay, of the following information:

- Regulated Information<sup>11</sup>;
- Any decision to cancel the listing of a listed fund, sub-fund, class or series;
- The net asset value per unit, upon calculation, or any material amendment thereto;
- Any change in the names of the listed fund, sub-fund, class or series;
- Any change in the financial year end of the listed fund;
- Any material change in the listed fund's constitutive documents;
- Any change in sponsor, registrar, auditor or transfer agent; and
- Any change of director, administrator, investment manager, depositary, prime broker or any entity with responsibility for the safeguarding of cash assets.

Any matters must be notified to the CAO, where possible, by 5:30 pm, Irish time, on the day on which the decision is made.

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<sup>11</sup> Regulated Information is defined under the Euronext Dublin listing rules as "information of a precise nature relating directly or indirectly to one or more listed funds or to one or more classes of units which has not been made public and which, if it were made public, would be likely to have a significant effect on the price of those classes of units ('inside information') and information that a listed fund is required to disclose under Euronext Dublin's Code of Listing Requirements and Procedures Investment Funds."

## 7 Notifications Relating to the Listed Fund's Operations (cont.)

### Matters Requiring Prior Unitholder and Euronext Dublin Approval

Prior unitholder and Euronext Dublin approval is required for any circular<sup>12</sup> relating to:

- A reverse transaction or other substantial transaction.
- A related party transaction.
- A change from open-ended to closed-ended status (except where provided for in the listing particulars of the fund when initially listing units on Euronext Dublin).
- A change which is relevant to the continuation of the listing, or may materially affect the interests of unitholders.
- A proposal to issue units at less than net asset value (except where such offer is first made on a pro-rata basis to unitholders).
- A proposal to change the status of the listed entity to a super sophisticated fund.
- A proposal by or for the listed fund which may lead to a substantial change in the nature and substance of the listed fund, including in certain circumstances where the delisting of the listed fund is proposed. Euronext Dublin may require that the proposal be approved by unitholders in advance.
- Circulars must be circulated to unitholders at least ten business days, or such shorter period as allowed by the constitutive documents of the listed fund, in advance of the voting date.

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<sup>12</sup> A circular is a document issued to unitholders, the content of which requires their approval, including notices of meeting but excluding listing particulars, annual report and accounts, interim reports and proxy cards and dividend or interest vouchers. A circular relating to a routine nature or convening an annual general meeting does not require the prior approval of Euronext Dublin. In all instances, however, the final circular must be submitted to Euronext Dublin for publication. Where there is doubt as to whether a circular requires Euronext Dublin prior approval we suggest you contact Matheson Listings in advance.

## 7 Notifications Relating to the Listed Fund's Operations (cont.)

### Matters Requiring Prior Euronext Dublin Approval

Euronext Dublin approval is required in advance of any of the following proposed changes being implemented by a listed fund:

- A material change in the investment objective and policies of the listed fund.
- A variation in class rights.
- A change in the general character or nature of the operation of the listed fund.
- Any proposed or actual material change in the investment policy and / or objective and investment strategy.
- A proposal to terminate, renew or extend the life of the listed fund.
- A change in the minimum subscription, where the change may affect the listed fund's suitability for listing to below the required USD100,000 applicable to an unregulated fund.
- A material amendment to the constitutive documents.
- Any intention or proposal to terminate or where the fund is established for a finite period of time to renew or extend the life of a listed fund.
- A change in the investment manager, depositary, administrator, prime broker or other service provider appointed to hold cash assets outside of the custody network<sup>13</sup>.
- A decision to cancel the listing of a fund, sub-fund, class or series.
- A related party transaction.
- A reverse transaction or other substantial transaction.
- A transfer of listing from the regulated market to the GEM market of Euronext Dublin or from the GEM market to the regulated market

### Matters Not Requiring Euronext Dublin Prior Approval

The following announcements may be made by a listed fund without Euronext Dublin prior approval:

- The net asset value per unit, upon calculation.
- Any change in the frequency of calculation of the net asset value of the fund.
- Any material change to the valuation or redemption policy.
- Changes in share capital and rights attaching to the listed units.

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<sup>13</sup> Euronext Dublin prior approval is only required for funds not authorised by the CBI

## 7 Notifications Relating to the Listed Fund's Operations (cont.)

- Details of any unitholding by the Directors, their connected persons or any person with managerial responsibility.
- Details of any change of any unitholding of the investment manager.
- The identity of any controlling unitholder<sup>14</sup>.
- A change or proposed change in investment, borrowing or leverage restrictions.
- Any material change in the tax status of the fund.
- Any suspension of dealings, redemptions, transfers or valuations.
- Any dividend paid, including details of the record date, the period covered, the payment date and the amount of the dividend.
- Any material change to the dividend policy.
- Notice of any annual general meeting or extraordinary general meeting.
- Any change in the financial year end.
- Any material change to the fees paid by the fund or material change in its material contracts.
- Any change in sponsor, registrar, auditor or transfer agent.
- Any change in the name of the listed fund, sub-fund, class or series.
- Any matters to be announced must, wherever possible, be notified to a RIS before 5.30 pm (Irish time) on the day on which the decision is made.

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<sup>14</sup> See Footnote 1

## 8 Continuing Obligation Requirements for Property Investment Funds

A listed property fund will be required to adhere to the additional listing requirements for a property investment fund for the duration of its listing on Euronext Dublin.

The additional requirements applicable are:

- A valuation report for every property acquired, dated no more than six months prior to the acquisition of such property, must be provided by the property fund's valuer.
- Any price paid in excess of 110% of the valuations detailed in the report must be notified to Euronext Dublin through a RIS. An explanation of the overpayment must be provided in the announcement to the RIS.
- The valuer / valuers appointed to the listed property fund must value the properties of the listed property fund every three years. The valuation report is to include the valuation amount, name of the valuer / valuers and the basis for the valuation along with an analysis of the portfolio of properties. This valuation report must be included in the annual accounts of the property fund.
- Any change or appointment of a new valuer must be approved by Euronext Dublin prior to appointment. Following the appointment or change an announcement must be released through a RIS.
- The annual report must state that the fund has completed with its investment restrictions throughout the accounting period. If it has not, details of any exceptions must be disclosed.

## 9 Payment of Annual Listing Fees

A listed fund is required to pay Euronext Dublin annual listing charges, calculated in accordance with the fees applicable during the life of the listing, on the anniversary of the original listing each year. A breakdown of Euronext Dublin listing fees are available on request from Matheson International Listings.

## 10 Market Abuse Regime

The Market Abuse Regime<sup>15</sup>, which came into effect on 3 July 2016, replacing the Market Abuse Directive (2003/6/EC), imposes requirements on listed funds to ensure that:

- They comply with all requirements of the Market Abuse Regime. The below points detail the key requirements that must be adhered to under the Market Abuse Regime, however the list is not exhaustive.
- Any Inside Information must be published as soon as possible:
- “Inside Information” means -
  1. information of a precise nature<sup>16</sup>, which has not been made public, relating directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments<sup>17</sup>;
  2. in relation to commodity derivatives, information of a precise nature, which has not been made public, relating directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at EU or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets; or
  3. for persons charged with the execution of orders concerning financial instruments, information conveyed by a client and relating to the client’s pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly to one or more issuers or to one or more issuers of financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.
- Inside information must be published in a manner which enables fast access and complete, correct and timely assessment of the information by the public. The fund must not combine the disclosure of inside information to the public with the marketing of its activities. The fund must post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

<sup>15</sup> EU Market Abuse Regulation No 596/2014 which together with the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/ EU) constitutes the “Market Abuse Regime”.

<sup>16</sup> means information that indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event, as the case may be, on the prices of financial instruments or related derivative financial instruments.

<sup>17</sup> “if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments” means information that a reasonable investor would be likely to use as part of the basis of the investor’s investment decision, and includes cognate expressions.

## 10 Market Abuse Regime (cont.)

- Persons in possession of inside information are precluded from dealing at a time when they are in possession of inside information. Any person discharging managerial responsibility within the fund shall not conduct any transactions on his / her own account or for the account of a third party, directly or indirectly, relating to the shares or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days.
- Any transactions by Directors or persons closely associated with them in shares of a listed fund are promptly reported to Euronext Dublin and CBI, once a threshold of €5,000 is reached in a calendar year<sup>18</sup>.
- The fund must maintain a permanent insider list and can also maintain a project specific insider list. Such lists must follow a prescribed format<sup>19</sup>.
- The fund must maintain detailed records and disclose inside information in the course of market soundings<sup>20</sup>. Where market soundings occur, the relevant disclosing market participant must, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. Before making such disclosure, the disclosing market participant must seek the consent of the person receiving the market sounding, informing them that they are prohibited from using that information or attempting to use that information to carry out transactions on his / her own account. All written records in relation to market soundings must be kept for a period of at least five years.
- Market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation. Such market operators and investment firms must report suspicious orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the CBI without delay.

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18 Notifications of such holdings must be made by way of a completed PDMR Form (available upon request from Matheson Listings), which must be filed with the CBI and Euronext Dublin. Directors or those closely associated with them must notify the market of any changes in their holdings within three business days from which the transaction occurred. Filings with the CBI must be made through the CBI's online reporting system (ONR). Directors should familiarise themselves with the Market Abuse Rules issued by the CBI (available upon request from Matheson Listings).

19 Please contact Matheson Listings if you would like a copy of a template insider list.

20 "market soundings" means the communication of information, prior to the announcement of a transaction in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by (a) an issuer; (b) a secondary offeror of a financial instrument; (c) an emissions allowance market participant; or a third party acting on behalf of or on the account of a person referred to in points (a), (b) and (c)".

## 11 Directors' Service Contracts

In the case of a listed fund which is a company, copies of any director's service contracts must be available to any unitholder or prospective unitholder:

- At the registered office of the listed fund, or in the case of an overseas listed fund, at the offices of Matheson as listing sponsor, during normal working hours or on each business day from the date of the notice convening the annual general meeting up to the close of the meeting.
- At the place of the annual general meeting for at least 15 minutes prior to and during the meeting.

## 12 Statutory Audit Directive

SAD<sup>21</sup> came into effect on 17 June 2016 and imposes certain obligations on public-interest entities (PIEs) with regard to the engagement of a statutory auditor or audit firm.

An EU domiciled fund listed on the regulated market of Euronext Dublin falls within the definition of a PIE and is therefore subject to SAD. With effect from 17 June 2016, the following new requirements will apply:

- Funds must rotate their audit firm every ten years<sup>22</sup>. Member States may extend this by an additional ten years where a public tender takes place.
- As a guide, the following details the deadlines by which the audit rotation must be effected:
  1. Funds with a listing or audit engagement date between 16 June 2003 and 17 June 2006 must rotate by 16 June 2016.
  2. Funds with a listing or audit engagement date after 17 June 2006 must rotate within 10 years of the relevant listing or engagement date.
  3. Funds with a listing or audit engagement date prior to, or on, 16 June 1994 must rotate by 16 June 2020.
  4. Funds with a listing or audit engagement date between 17 June 1994 and 16 June 2003 must rotate by 16 June 2023.
- There is a prohibition on the provision by an audit firm of certain non-audit services such as specific tax, consultancy and advisory services to the audited fund, its parent undertaking and its controlled subsidiaries within the EU<sup>23</sup>.

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21 Statutory Audit (Directive 2014 / 56 / EU).

22 The 10 year period begins at the date of the auditor engagement or the date of listing.

23 A suite of extensions are available from Member States to continue to allow auditors to provide certain non-audit services, subject to specific safeguards being in place.



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# Matheson

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