

Central Bank of Ireland Identifies MiFID Client Suitability Requirements Deficiencies

On 1 December 2021, the Central Bank of Ireland ("Central Bank") published a 'Dear CEO' letter¹ ("Letter") addressed to MiFID authorised investment firms and credit institutions offering MiFID investment services ("Firms") detailing its findings from its review of Firms' compliance with MiFID II² suitability requirements.

The review, carried out throughout 2020, was undertaken as part of an ESMA coordinated common supervisory action ("CSA") and its findings were included in ESMA's public statement³ at the CSA conclusion on 21 July 2021.

The Letter highlights areas for attention by Firms authorised in Ireland and should be read in conjunction with the ESMA public statement.

Sustainable Finance; MIFID Updates

This review is timely given that on 2 August 2022, Commission Delegated Regulation (EU) 2021/1253⁴ (which amends Delegated Regulation (EU) 2017/565 to factor sustainability preferences) comes into effect.

As highlighted in a previous client update⁵, this will require Firms providing financial advice or portfolio management to carry out a mandatory assessment of the sustainability preferences of

clients as part of the suitability assessment; take this into account in the selection of financial products; and prepare client reports explaining how the recommendation meets a client's investment objectives, risk profile, capacity to bear loss and sustainability preferences. Firms must ensure sustainability preferences are integrated into their investor suitability framework before 2 August 2022.

Suitability Requirements

When providing investment advice and / or portfolio management, Firms are required to take all reasonable steps to ensure a client's investments align to their objectives and personal circumstances.

Central Bank Findings

While positive practices were noted, the Letter identifies a number of shortcomings and areas of improvement.

The Letter refers to the Central Bank's overarching concern that Firms have failed to establish a risk-based and client-focused approach to suitability that prioritises positive outcomes for clients and puts the necessary safeguards, procedures and controls in place to ensure clients' best interests are protected.

¹ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/compliance-monitoring/themed-inspections/common-supervisory-action-mifid-ii-suitability-requirements.pdf>

² Directive 2014/65/EU of the European Parliament and of Council of 15 May 2014.

³ https://www.esma.europa.eu/sites/default/files/library/esma35-43-2748_public_statement_on_2020_csa_on_suitability.pdf

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1253&from=EN>

⁵ <https://maples.com/en/knowledge-centre/2021/8/sustainable-finance-new-eu-delegated-legislation>

Firms are cautioned that they must improve their assessment of clients' knowledge and experience, financial situation and investment objectives and that suitability reports need to be sufficiently detailed and personalised.

Stricter controls on 'exception' processes are required where a client insists on proceeding with a transaction at their own initiative, against a Firm's suitability advice.

It also highlights the findings of inadequate training frameworks, poor reporting and disclosures to clients, and a failure to establish clear procedures to identify potentially vulnerable clients.

Required Actions and Timing

The Central Bank has initiated 36 risk mitigation programmes requiring individual Firms to take specific action to improve their client suitability frameworks.

All Firms providing portfolio management and advisory services to retail clients are required to conduct a thorough and documented review of their individual sales practices and suitability arrangements that takes account of the Letter and ESMA public statement. This should be completed and an action plan discussed and approved by each Firm's board by the end of Q1 2022.

The MiFID suitability requirements are not confined to retail clients. The Central Bank has advised that it may, during future supervisory engagement, have regard to a Firm's consideration of the Letter and the ESMA public statement if there is non-compliance with any regulatory requirements raised therein.

How We Can Help

⁶ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

Our Financial Services Regulatory Group has extensive experience in designing client suitability frameworks and carrying out reviews of existing suitability requirements frameworks to ensure they align with the Central Bank and relevant regulatory guidance and expectations.

Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide is available on our website page⁶ and in our brochure⁷.

If you would like further information, please liaise with your usual Maples Group contact or:

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⁷ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

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