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Investment Firm and Intermediary Newsletter

November 2024

Message from Des Ritchie, Head of Consumer Protection: Investment Firms, Intermediaries & Client Assets Division

Welcome to the second newsletter of 2024. The newsletter has been expanded to include MiFID Investment Firms and is now called the "Investment Firm and Intermediary Newsletter".

Retail Intermediaries and Investment Firms with retail clients share a similar customer base and product offering. They provide advice and services to retail investors to empower them to make decisions based on their needs and preferences. The Central Bank seeks to ensure that consumers' interests are at the centre of retail investing. This aims to enhance retail investors' trust and confidence to safely invest in their future. The purpose of this newsletter is to highlight specific areas of interest and key pieces of work relevant to Intermediaries and Investment Firms with retail investors.

You may have seen our recent announcements about changes we are making to our supervisory approach. As we recognised in our Strategy, the economy, the financial system and financial services products are changing, driven by technology and consumer preferences. The system is becoming increasingly interconnected and complex, as are the challenges and risks facing consumers and the economy.

In this changing world we recognise we need to change the way we work to continue to deliver on our mandate both today and into the future. This includes transforming our supervisory approach to ensure consumers of financial services are protected in all respects in this changing and increasingly complex environment.

In the new structure we will have an integrated supervisory framework where directorates with oversight of banks, insurance companies and capital markets will be responsible for the supervision of all the functions in their respective sectors. Each of the Directors in these areas will have explicit responsibility for consumer protection, ensuring the safety and soundness of firms and the integrity of the system in their role. Your engagement with the Central Bank will continue to be with your existing contacts in the Retail Intermediaries and Investment Firms teams, which will be based in the Capital Markets and Funds Directorate. The Central Bank plans to implement these changes in early 2025. You can read more about the changes on our website.

The articles are relevant for both Intermediary and Investment Firms; they are laid out by topic for ease of reference. We welcome any further feedback, as well as any suggested topics that you would like to see in future editions.

Table of Contents

Review of Retail Intermediaries Operating on the Basis of a Fair or Limited Analysis of the Market

The Central Bank is currently undertaking a thematic review which focuses on Retail Intermediaries that operate on the basis of either a “fair” or “limited” analysis of the market.

This review will gather information on whether firms, when providing intermediation services under the IDR, IIA and/or CMCAR, provide services to consumers on the basis of a “fair” or “limited” analysis of the market, as per the definition of these terms set out in Chapter 12 of the Consumer Protection Code.

A key objective of the thematic review will be to better understand the nature of services being provided in the intermediary sector and how this information is being disclosed to consumers. This work is central to our strategy of addressing the material risks of transparency and ineffective disclosures to consumers as previously highlighted in both the 2023 Roadshow and the Regulatory & Supervisory Outlook Report.

The first phase of this review was a brief survey issued in August to the entire retail intermediary sector in order to gather information on the nature of services provided to consumers. There was positive engagement from firms overall and the survey achieved a response rate of 80%. Thank you to everyone who took the time to complete the survey.

The second phase of the review is currently underway. It involves a desk-based questionnaire issued to a sample of firms to gather greater detail on whether a fair or limited analysis is offered on each product line and how firms are disclosing this information to consumers. As part of this thematic review we will be meeting with firms during Q4 2024 and Q1 2025.

The Central Bank believes that trust and transparency are the cornerstones for consumers as part of their experience when dealing with retail intermediary firms.

We will keep the sector updated on the outcomes of the thematic review in 2025.

“Too many choices, too many decisions, too little time…”

Best interests: Delivering for consumers in a complex world – Remarks by Deputy Governor Sharon Donnery at the Health Insurance Authority Conference, 25 September 2024.

Launch of the New Online Application Form for Retail Intermediaries

The Central Bank launched its Online Application Form for Authorisation as a Retail Intermediary - A Form (A-Form) in September 2024.

The online application form will provide an enhanced and streamlined process for applicants. Some of the benefits include:

I. One system for submitting the application form and Individual Questionnaire(s);

II. A shorter and more intuitive form for applicants. The form will only include questions that are relevant to the applicant;

III. Validations that will assist applicants in avoiding common errors and omissions; and

IV. Use of the Central Bank Portal, an online system that applicants will continue to use when authorised.

Useful Information and Tips

- Applications will need to be completed in one sitting.
- Firms will be required to have certain documentation and information ready such as; a brief overview of persons responsible for compliance in the applicant firm (except for those appointing a PCF-12, Head of Compliance), Letters of Appointment (CCA & CMCAR), brief overview of human and financial resources for training staff (IIA) and detailed financial projections (IIA only). A full list of the documents needed for each application type is available on the website.
- All firms will have to include some information in relation to their financial projections and client numbers for years 1-3.
- Multiple document uploads have to be uploaded as a zipped file. An example of this may be Letters of Appointment.

The Central Bank will continue to accept the A-Form in word format.

If you are interested in submitting an authorisation application via the online Portal or have any questions, please refer to the useful information on our website or contact RIauthorisations@centralbank.ie.

Authorisation Webinar

The Retail Intermediaries Authorisations Team will be hosting a webinar focusing on the online application form for authorisation as a Retail Intermediary – A Form. Please keep an eye on the Central Bank's website for further details on any upcoming webinars. If you wish to register for the webinar, please email your contact details to riauthorisations@centralbank.ie.

Update on the Changes to Professional Indemnity Insurance Limits

Insurance Intermediaries

The changes to the minimum amount of Professional Indemnity Insurance (PII) cover set out by the Insurance Distribution Directive (the IDD), which is to be held by Insurance Intermediaries, came into effect on **9 October 2024.**

A summary of the increases in the minimum amount of PII cover that Insurance Intermediaries are now required to hold is as follows:

- The base PII amount applying to each claim has increased from €1,300,380 to €1,564,610; and
- The base aggregate PII amount per year has increased from €1,924,560 to €2,315,610.

Insurance Intermediaries are reminded to ensure they hold adequate PII in line with the requirements of the IDD.

Investment Intermediaries

The Central Bank has made updates to the Handbook of Prudential Requirements for Investment Intermediaries (the Handbook), to align the PII obligations for Investment Intermediaries with those for Insurance Intermediaries (as has previously been the case).

Investment Intermediaries are reminded to review the changes to the Handbook and ensure they hold adequate PII in line with the requirements.

Holding the required level of PII is a key prudential and consumer protection safeguard. Therefore, as part of the on-going supervision of Intermediaries, the Central Bank monitors the requirement for Intermediaries to hold adequate PII.

“Equality of arms” – Giving both sides a fair opportunity to present their case

Financial Literacy – Empowering consumers to protect their financial future – Remarks by Deputy Governor Derville Rowland, 5 July 2024.

Managing Key Person Risk in Small Firms

Operational resilience can be described as the ability of a firm to identify and prepare for, respond, adapt to, recover and learn from an operational disruption.

In a sector such as the retail intermediary sector, which is diverse in terms of the size and legal structure of firms and which varies from relatively large corporate entities to one-person operations, operational resilience issues can materialise in many ways.

One such example is in smaller one-person dependent firms where that key person can be absent for various reasons such as a long term illness, planned/unplanned medical treatment or a family bereavement, or in the tragic circumstance of the death of that key person. Absences may lead to uncertainty in relation to the day-to-day work of the firm and can lead to consumer detriment where clients cannot access time critical information in a timely manner.

The first step in becoming operationally resilient is accepting that disruptive events can occur and that these events will need to be properly planned for and managed effectively. Firms should develop and regularly review a succession and contingency plan to allow for appropriate continuation of essential services in such circumstances.

The Central Bank expects that in the event of such circumstances arising a firm would:

I. notify the Central Bank as soon as practicable;

II. nominate an alternative point of contact if required;

III. communicate any disruption of service to affected consumers to enable them to make alternative arrangements; and/or

IV. inform the consumer in a timely manner as to how continuity of service will be provided.

The Central Bank would urge firms to seek appropriate advice in relation to the implementation of such a plan as continuity of service must be an essential feature of a firm's relationship with consumers.

Retail Intermediary Annual Return – Common Submission Issues & Solutions

The Retail Intermediary Supervision Team has observed, over the last number of months, that some firms are experiencing delays in submitting their Retail Intermediary Annual Return (the RIAR). This appears to be the result of three main issues which are listed below.

Issue #1: Trouble logging into the Central Bank Portal (the Portal).

Solution: There is a helpful guide on the Central Bank website which covers the requirements to login to the Portal. If, having reviewed this material, a firm is still having trouble logging in, they should contact Portal Support (portalsupport@centralbank.ie).

Issue#2: The RIAR is not visible once logged in.

Solution: If a Portal Administrator is logged in but cannot see the RIAR, please follow the steps set out below:

1. Click Portal Administrator
2. Manage users
3. In your name click Action drop-down
4. Manage Permissions
5. Click the blue save at the bottom right
6. Logout and log back in

If, having followed these steps, a firm can still not see the RIAR, please contact the Retail Intermediary Supervision Team (brokers@centralbank.ie) for further assistance. If a firm can see the RIAR and has a specific query about how to complete a particular section, the Retail Intermediary Supervision Team will be able to help.

Issue #3: Firm does not have a second person set up on the Portal in order to sign off on the RIAR.

Solution: For most firms, with the exception of sole traders, the RIAR is completed by one person in the firm and then signed off by a second person. If a second person has not yet been set up as a Portal user, please review this helpful guide. If, having consulted this guide, the firm is still experiencing difficulties in setting up a Portal user please contact Portal Support (portalsupport@centralbank.ie).

Firms should ensure their RIAR is submitted on time, we proactively follow up with all firms who fail to submit their RIAR.

Notification Form For Change of Shareholding in Insurance Intermediaries

Insurance intermediaries are required to notify the Central Bank of any material changes to their operations including any change to shareholdings. A new change of shareholding notification form has recently been published on the Central Bank's website to be completed and submitted to brokers@centralbank.ie.

Revocation of services that are no longer required

Retail Intermediaries are reminded that should a firm hold an authorisation/registration that is no longer required (because the firm is no longer providing that service) an application to revoke the relevant authorisation/registration should be submitted by the firm to the Central Bank (revoke@centralbank.ie). Details on the revocation process including the revocation application form to be completed and submitted can be found here.

Investment Firms are also reminded that should a firm hold an authorisation/registration that is no longer required (because the firm is no longer providing that service) an application to revoke the relevant authorisation should be submitted by the firm to the Central Bank (investmentfirmauthorisations@centralbank.ie). Details on the revocation process, including the revocation application form to be completed and submitted, can be found here.

As noted under question 4 of the Central Bank's Revocation Form firms must provide their contact and PII details to the FSPO at the following email address; RegistrarofProviders@FSPO.ie.

Once the firm has revoked the relevant authorisation/registration, all references to that authorisation/registration should be removed from the firm's website, Terms of Business and other relevant documentation and information provided to clients by the firm.

Firms are encouraged to review their website and documentation on a regular basis to ensure they remain accurate and up-to-date. The Central Bank requires that firms do not mislead clients in terms of the products and services they are authorised to advise or provide services on, and to ensure that all information provided to clients is clear, accurate and up-to-date. Provision of accurate information should form an essential part of firms' investor protection frameworks.

For queries in relation to the revocation process please email revoke@centralbank.ie.

Common Supervisory Action on the MiFID II Marketing Communications Requirements

In October 2024, the Central Bank published the findings of a recent thematic review it conducted as part of a Common Supervisory Action (CSA), which included a Mystery Shopping Exercise (MSE), coordinated by ESMA. The review examined Investment Firms' application of the MiFID II Marketing Communications disclosure requirements by firms providing investment services to retail clients.

A summary of the key CSA findings

- The majority of Investment Firms are not clearly identifying marketing and advertising content as such, and there were noticeable differences in what firms considered marketing and advertising content to be;
- Deficiencies were identified in the governance and control frameworks articulated in documented policies and procedures, particularly in cases where firms have outsourced some or all of the Marketing and Advertising function. In some cases, a documented service level agreement was not in place with the outsource service provider;
- Published marketing and advertising content on digital channels relating to a small number of firms did not meet the expected standard of being fair, clear and not misleading;
- There is an over-reliance on the initial review and approval process to identify any errors or omissions in marketing and advertising content, with the Compliance Function not effectively involved in the post publication review process in a number of firms; and
- Considerable variances were noted in firms' approaches to defining the characteristics of the investors that are intended to receive marketing and advertising content.

We have published a Dear CEO Letter that provides detailed feedback to industry on the findings of the CSA, together with good practices observed, and outlines our expectations in relation to the application of these important investor protection requirements. We have also published a Consumer Research Bulletin that provides feedback to industry on the findings of the MSE and consumer research conducted as part of the CSA, which informed our supervisory work.

Our findings were also submitted to ESMA and an ESMA Report outlining an aggregate view of the findings of the CSA and MSE from participating national competent authorities was published.

The consumer research conducted as part of the CSA looked at the experience of retail investors interacting with investment firms, their views of the sector and the issues they have faced.

Investors are telling us that they still find engaging with the sector challenging in some ways, and they highlight disclosures and the provision of information in marketing and advertising material as a challenge for them.

Did you know?

The Central Bank issued a Dear CEO Letter and Consumer Research Bulletin on 10 October 2024. The expectations outlined in the letter seek to enhance the standard of investor protection afforded to retail clients.

Common Supervisory Action on the MiFID II Marketing Communications Requirements

Central Bank Expectations and Actions Required

The Central Bank expects Investment Firms to review their marketing and advertising practices against the *ESMA Report* and the findings, expectations and good practices as set in Schedule 1 of the *Dear CEO Letter*. Firms are reminded that this review should be documented, with an action plan discussed and approved by the firm's Board by **31 January 2025**. The Central Bank expects that this document and evidence of the discussions and approval of the Board will be available for review during future supervisory engagements with Investment Firms.

Investors need to have confidence that Investment Firms' marketing and advertising communications are developed, designed and delivered in a manner to support them to make informed investment decisions. Poor presentation of information can distort investors' ability to assess the benefits and risks of financial products, and practices including digital engagement practices that do not have investors' best interests at their core can lead to investor detriment and undermine trust and confidence in capital markets.

Investment Firms must have robust investor protection frameworks in place to support their customers to ensure they are acting in their best interests. This will continue to be a key focus of our supervisory work and engagements at ESMA in respect of the MiFID sector.

All marketing and advertising material must be:

- Clearly identifiable as such
- Fair, clear and not misleading
- Presented in a way that is likely to be understood by a retail investor.

Marketing and advertising material and digital engagement practices must support retail clients to make informed investment decisions.

Investment firms must complete a review of their marketing and advertising practices and the Board must approve an action plan by 31 January 2025.

Client Assets

The protection of client assets is a key priority for the Central Bank. It is a fundamental aspect of investor protection and the Central Bank's strategic theme of safeguarding. The Central Bank places high expectations on Investment Firms in relation to the safeguarding and handling of client assets. Some of the key objectives of the Central Bank's client asset regime are to minimise the risk of loss or misuse of client assets by Investment Firms, and in the event of the insolvency of an Investment Firm, to enable the efficient and cost effective return of those client assets to clients.

Changes to the Client Asset Regime

Following a public consultation, which started in December 2020, the Client Asset Requirements (CAR) were amended and the revised CAR was applied to Investment Firms effective 1 July 2023 and to Credit Institutions providing investment services effective 1 January 2024. Revised guidance was also published to support firms' implementation of the revised CAR.

The Central Bank's client asset regulatory regime is based on seven core client asset principles namely:

1. Segregation
2. Designation and Registration
3. Reconciliation
4. Daily Calculation
5. Client Disclosure and Consent
6. Risk Management
7. Client Asset Examination

Some of the key changes to the CAR are:

- For **segregation**, we clarified in the guidance the expectation that client funds should be deposited directly into a third party client asset account upon receipt.
- For **reconciliation and calculation**, we have uplifted the reconciliation of physical client financial instruments from guidance to a requirement.
- In the area of **disclosure and consent**, we have introduced new requirements to capture more complex wholesale services and right of use of client financial instruments; and
- In relation to **risk management**, the revised CAR introduced some significant enhancements to the Client Asset Management Plan (CAMP), such as the addition of the Client Asset Applicability Matrix (CAAM) and enhanced the guidance to include the Client Asset Risk Matrix.

Central Bank Observations Post-Implementation

We have found that the additional data gathered in the CAAM and via the revised Monthly Client Asset Returns (including around outsourcing and client assets held in different jurisdictions when deposited with third parties) supports our supervisors in our engagement with Investment Firms and enables us to be more efficient and targeted in our engagement.

In terms of Breach and Incident (B&I) reporting, there was an uptick in the number of reports received from Investment Firms in the initial 6 months post implementation. However, our analysis of the reports indicates that the increase was not driven by any specific changes to the requirements. B&I reporting remains an important tool for us in ensuring that client assets are adequately protected at all times and constitutes a significant part of our event driven engagement with Investment Firms.

Lastly, we have reviewed a number of CAMPs over the last few months, as well as undertaking targeted reviews of sections of CAMPs, as part of a broader programme of engagement. In most instances we have found a strong level of consistency between the CAR guidance and Investment Firms' CAMPs. One area of the CAMP which has tended to be less mature is the insolvency section. We have no appetite for discrepancies with the guidance or inaccuracies in this part of the CAMP. It should be a live document and be accurate at all times such that it could be used by an insolvency practitioner in the event that one is appointed.

Please refer to the Central Bank's website for further information on the client asset regime. If you have any queries, please contact us at cast@centralbank.ie.

MiFID Sectoral Supervision Strategy

In February 2024, the Central Bank published its Regulatory & Supervisory Outlook Report which outlined the key cross-sectoral drivers of risk for consumers of financial services in Ireland. While each regulated firm should take concrete action to make a positive difference for consumers in relation to cross-sectoral risks, Investment Firms should equally be aware of the key risks for consumers with respect to their own business model and sector.

Key Drivers of Consumer Risk

- Poor business practices & weak business processes
- Ineffective disclosures to consumers
- The changing operational landscape
- Technology-driven risks to consumer protection
- The impact of shifting business models

The Central Bank considers these risk drivers in developing its retail conduct supervisory strategies for all retail sectors, including the MiFID Investment Firm sector. In our development of a Retail Conduct Strategy for the MiFID Investment Firm sector, we have concentrated on the key risk areas identified as having the potential to cause significant detriment for retail investors. The Strategy identifies the key MiFID Investment Firm sector risks facing retail investors as:

Governance and controls risks and inadequate investor protection frameworks

The lack of a mature and effective governance and control framework, including investor protection framework, can increase the likelihood of poor outcomes for investors. Investment Firms may fail to assess and identify the risks posed to retail investors by their specific business model, strategy and processes, and consequently may not implement the procedures, controls and oversight mechanisms required to mitigate and manage these risks, and ensure the best interests of investors are protected. These risks can be magnified where a firm lacks an investor protection focused culture.

We expect Investment Firms to have robust and fit-for-purpose governance structures and control frameworks appropriate to their nature, scale and complexity in place. We expect the Boards and leadership teams of Investment Firms to drive effective cultures that put retail investors at the heart of their business. Investment Firms must achieve a sustained improvement in culture by focusing on the values and conduct that are the building blocks of culture. These standards must be reflected in every business area, from corporate governance structures to individual accountability; from strategy setting to product development; and from risk management to people management.

The **Regulatory & Supervisory Outlook Report** sets out the Central Bank's perspective on the key trends and risks that are shaping the financial sector's operating landscape and our regulatory and supervisory priorities for the next two years.

Supervisory Priorities:

- Proactive risk management and consumer-centric leadership of investment firms.
- Investment firms are resilient to the challenging macro environment.
- Investment firms address operating framework deficiencies.
- Investment firms manage change effectively.
- Climate change and Net Zero transition are addressed.
- The Central Bank enhances how it regulates and supervises.

Inducements/remuneration and ineffective disclosure

Where retail investors are not adequately informed of key information and the level of risk associated with a product or service, this can lead to poor investor decision making and outcomes. Where Investment Firms have an incentivised remuneration model, this could lead to an inherent conflict of interest between revenue generation and acting in the best interests of investors. A lack of understanding of these conflicts of interest by firms can mean that the conflicts are not adequately mitigated or managed increasing the likelihood that the best outcome for investors will not be achieved, particularly where the conflict is coupled with an information asymmetry between the Investment Firm and investors.

Investment Firms must ensure that appropriate and timely disclosures are provided in a way that effectively informs retail investors and supports them to make well-informed decisions to meet their financial needs. Investment Firms must proactively identify and address any inherent conflicts of interest and disclosure risks relating to inducement and remuneration structures, and act in a manner that seeks to mitigate these risks and secure their clients' interests.

Capability to respond to structural change and the changing operational landscape

The rapid change in the operational landscape creates opportunities and risks for firms and retail investors. Some key changes that may create risks for firms and investors in the MiFID Investment Firm sector include increased digitalisation in the provision of services and how services are accessed by investors, and increased market volatility arising from macroeconomic and geopolitical events.

Investment Firms must respond proactively to the changing economic and operational environment in which they operate and in an investor protection focused manner. Investment Firms are responsible for navigating change in a manner that places the best interests of investors at the heart of their commercial decision-making.

Financial resilience

The operational backdrop of heightened macroeconomic and geopolitical uncertainty, and the risk of globally significant events leading to extreme market volatility, can affect the financial resilience of Investment Firms and may result in strategic decision making that adversely impacts investors. The provision of investment services can be disrupted, and this can be particularly damaging where the firm holds assets that belong to retail investors.

We expect firms in the MiFID Investment Firm sector to be sustainably profitable, financially resilient, well-run firms that protect investors' interests, serving the needs of the economy and investors. Firms must navigate challenging conditions in a prudent and responsible manner, including robustly applying investor protection frameworks to ensure investors' interests are protected.

Investing in operational resilience

The lack of robust IT and operational risk management frameworks resulting in operational risks materialising due to poor IT governance and controls, can lead to poor outcomes for retail investors, for example because services are disrupted or do not operate as intended or due to loss of client data.

We expect Investment Firms to be resilient from an operational perspective, with an increased focus on IT resiliency, data management, cyber security and oversight of their outsourced arrangements. Investment Firms need to effectively manage incidents where they occur, ensuring clear communications to investors (where required) and the resumption of business operations in a timely manner.

The MiFID Investment Firm Sectoral Strategy is guided by our desire that the MiFID sector as a whole, and individual firms providing MiFID investment services, notwithstanding their relative size or complexity, effectively balance resources across investor protection obligations and other competing business priorities. Investment Firms must always act in a manner that seeks to ensure positive investor outcomes such that investors' are treated fairly and their interests are protected.

Authorisations Process for MIFID Investment Firms

In May 2024, the Central Bank launched its inaugural Authorisations and Gatekeeping Report, highlighting how we discharge and continue to refine our authorisation mandate; by providing information on our authorisation framework and risk appetite, by explaining our priorities and expectations of applicant firms, by providing insights into the operation of the Fitness and Probity regime and by outlining the key challenges that we see for Investment Firms seeking authorisation. This is supported by the issuance of Cross Sectoral Guidance on Authorisations Expectations in November 2024.

Investment Firms intending to apply for a MiFID authorisation by the Central Bank are recommended to review the above reports and our Authorisation Guidance Note in advance of contacting the Central Bank to request engagement on a proposed application. The Guidance Note details the process and requirements for establishing an Investment Firm in Ireland.

We welcome applications where the proposed Investment Firm can meet the legislative requirements relating to Investment Firms and all other current published requirements including the recommendations, opinions and guidance issued by the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) and all requirements issued by the Central Bank as published on its website – www.centralbank.ie.

Application Process

Preliminary Meeting

The Investment Firm should request a meeting via email to discuss its proposed application and associated permissions. The firm is required to prepare and submit a presentation 15 working days in advance of the meeting including a list of attendees.

Key Facts Document (KFD)

Investment Firms are recommended to review our KFD Guidance in advance of KFD submission. The purpose of the KFD is to give the Central Bank a high level overview (more granular than that provided in the preliminary meeting presentation) of the firm's proposed business in an effort to identify any significant issues that might hinder an application from progressing through to authorisation.

Complete Formal Application

All necessary documentation must be submitted in order for the formal application to be deemed complete. The onus is on the Investment Firm to ensure all information in the application form (guidance available) meets the relevant requirements, where applicable.

The determination on the application will generally be made within 6 months of receipt of a complete application.

Preliminary Meeting to discuss

Business model

Rationale for authorisation

Regulatory permissions

Governance arrangements

Financials

Target market / client base

Authorisation timelines

↓

KFD

Providing the Central Bank with an overview of the investment firm's proposed activities and associated risks, business model, capital, staffing and governance structure

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Complete Formal Application

Signed & completed application form

Programme Operations

IQ submission for all PCF role holders

3 year financial projections

All requisite shareholder information

Client Asset documentation *(if applicable)*

MiFID Annual Conduct of Business Returns 2024

In line with the Central Bank's data driven approach to supervision, further enhancements will be made to the MiFID Conduct of Business Return (COBR) and Investments Product Template (IPT) as part of the 2024 annual data collection exercise.

What's Changing?

Additional data points will be incorporated into the COBR and IPT to reflect market developments and provide a more comprehensive understanding of the MiFID landscape. The Guidance Notes to assist Investment Firms in completing the COBR and IPT will also be updated to reflect the enhancements made to the returns.

As we move to implement these changes, we wanted to take the opportunity to remind Investment Firms of the following points:

Timelines

The updated **2024** returns will be accessible on the Central Bank Portal in **January 2025**. The due date for completion is **31 March 2025.** It is important that Investment Firms ensure they complete and submit their returns by this date. The Central Bank will proactively follow up with any Investment Firm who fails to submit their returns on time.

The updated Guidance Notes will also be available on the MiFID Firms section of the Central Bank website in **January 2025**.

Access to the Central Bank Portal

Investment Firms should be registered on the Central Bank Portal so they can submit their returns, but there is a comprehensive page available on the Central Bank website providing guidance on how to register if that is not the case.

We would ask that Investment Firms ensure they have access to the Portal in advance of the **31 March 2025** submission date. There is also a helpful guide on the Central Bank website which covers the requirements to login to the Portal. If, having reviewed this material, a firm is still having trouble logging in, they should contact Portal Support (portalsupport@centralbank.ie).

Integrity of Firm Data

Investment Firms are reminded of the importance of ensuring both the accuracy and completeness of the data included in their 2024 returns. Investment Firms must have the necessary internal governance arrangements and control mechanisms in place to ensure the integrity of the data submitted to the Central Bank.

Enforcement Action – Market Abuse Case

Earlier this year, a MiFID authorised stockbroking firm was fined €1,225,000 for a breach of Article 16(2) of the Market Abuse Regulation. The Central Bank published a statement regarding its enforcement action taken against the firm on 29 February 2024. The public statement regarding the action can be found here.

The failings that gave rise to the investigation were first identified by the Central Bank during its supervisory market abuse thematic review in 2020.

The investigation found that the Investment Firm failed to put in place and maintain effective arrangements, systems and procedures to monitor, detect, and report suspicious orders and transactions that could relate to insider dealing, market manipulation, attempted insider dealing or attempted market manipulation. These failures in respect of risk identification, risk monitoring and governance arrangements highlight the importance of ensuring independent challenge from the third line of defence. The Investment Firm admitted to the breach.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, said "*This outcome stresses the importance of effective arrangements, systems and procedures, such as trade surveillance frameworks, within firms that professionally arrange or execute transactions. Effective trade surveillance facilitates the submission of high quality Suspicious Transaction Order Reports (STORs) by firms to the Central Bank, which assist in the detection and combatting of market abuse.*"

The Central Bank has made it clear through this publication, supervisory engagements, Dear CEO letters and the 2023 Securities Markets Risk Outlook Report that it expects the Board and senior management of regulated entities to take full ownership of the governance of market conduct risk. The Central Bank also expects Investment Firms to have effective monitoring in place for the detection and reporting of suspected market abuse

Policy Updates

Update on the Retail Investment Strategy

What is the Retail Investment Strategy?

The Retail Investment Strategy (RIS) is a package of legislative proposals intended to strengthen the EU's rules on retail investor protection.

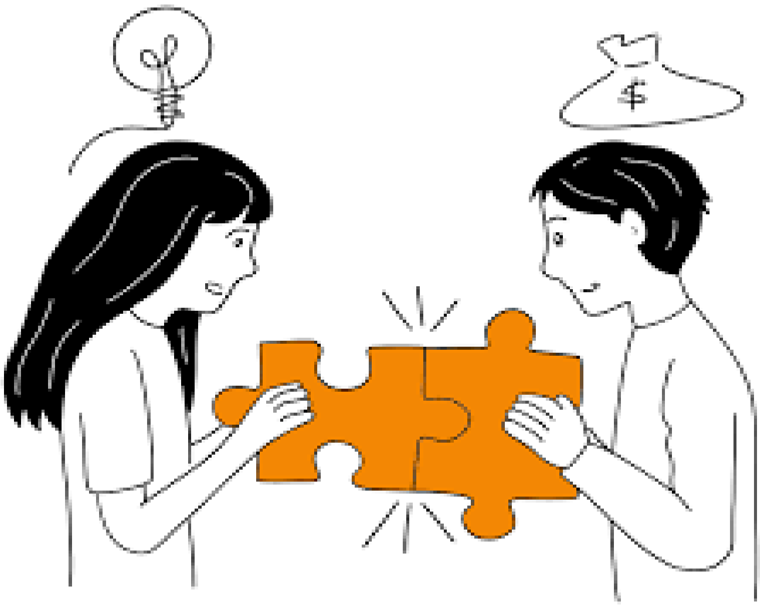
What does the Retail Investment Strategy aim to achieve?

The proposed measures aim to enhance retail investors' trust in capital markets and help them achieve better outcomes with their investments.

Currently, investor protection rules are sector-specific and can differ from one financial instrument to another. These rules can sometimes be inconsistent, making the cumulative requirements confusing for retail investors. The RIS will provide retail investors with the same level of information and protection regardless of which investment products and marketing and distribution channels they use. The RIS will amend MiFID II, IDD, PRIIPs Regulation, UCITS Directive and AIFMD.

The initial proposals for the RIS were published in May 2023 and the co-legislators have subsequently adopted their amending positions. This article sets out these differing proposals, where relevant.

Welcome to the Investor Corner of the European Securities and Markets Authority (ESMA). ESMA cannot tell consumers what investments to make but it can help them to make a better-informed investment decision and avoid fraud and it has created this corner to address frequent questions and issues that retail investors have often encountered



Update on the Retail Investment Strategy cont.

What are the main proposals under the package?

Value for Money

The RIS introduces new requirements to assess the 'value for money' of a product. Firms must have a process to assess if a product will deliver value for retail investors. The overarching intention of the proposals is to limit products offering poor or no value for money to retail investors, taking into account the performance of a product. The European institutions have put forward differing proposals on the use of benchmarks (as a means of bringing objectivity to the value for money assessment), but the detail is yet to be agreed.

Inducements

The initial proposals ban inducements for sales of investment products where no advice is provided. However, there have been subsequent proposals that do not include such a ban and instead focus on a number of tests to be respected when paying or receiving inducements.

Marketing

These proposals aim to protect retail investors from misleading marketing by ensuring that financial intermediaries are fully responsible for the use (and misuse) of their marketing communications, including where these are delivered via social media, celebrities or other third parties.

Disclosures

A number of changes to disclosure requirements are proposed to encourage standardisation, increase transparency and modernise the rules on disclosures so that they reflect digital distribution.

Other proposals

There are also other proposals in the RIS that will impact firms, including on suitability and appropriateness assessments, changes to the professional investor criteria in MiFID and changes to knowledge and competency requirements.

What are the next steps?

The proposals described in this article are still subject to some change over the forthcoming period. The exact timeline for the final agreed package is not known yet but it is expected in late 2024/ H1 2025. There are also a significant number of other requirements to be developed as part of the RIS package.

"Over the past years, digitalisation has had an increasingly important role in enhancing the design, development and selling of innovative insurance products and services through both traditional and new digital platforms and channels."

Against this background, in 2023 EIOPA launched an EU market-wide survey aiming to better understand the dynamics, opportunities, and risks associated with ongoing digitalisation projects in the European insurance sector. The findings of this survey are summarised in this **report** and are complemented with inputs from a survey providing customer's perspectives on certain digitalisation aspects.

In December 2023, ESMA launched a discussion paper on the digitalisation of retail investment services and related investor protection considerations. ESMA sought stakeholder input on recommendations regarding online disclosures, digital tools, and marketing practices. The feedback sought will support ESMA's supervisory convergence work and prepare it for potential mandates for technical advice/standards in these areas.

Markets in Crypto-Assets Regulation (MiCAR)

Part of the European Commission's Digital Finance Strategy, MiCAR establishes an EU framework for the regulation of specified activities involving crypto-assets that are not already covered by EU law (namely issuance of crypto-assets; custody and administration of crypto-assets; and operation of crypto-asset trading platforms and exchanges).

The aim of MiCAR is to address the risks to consumer protection and market integrity from crypto-assets along with specific risks to financial stability and monetary policy while also bringing regulatory clarity to the sector. It will provide a consistent framework across the EU for the ongoing development of this innovation. MiCAR is an important step forward in the regulation of crypto activities in Europe while also leading the way on the regulation of the crypto sector globally.

MiCAR became applicable to issuers of Asset Reference Tokens (ARTs) and E-Money Tokens (EMTs) on 30 June 2024 and will become applicable to Crypto-Asset Service Providers (CASPs) on 30 December 2024. The Central Bank will be designated as the regulator for the authorisation and supervision of entities that will be subject to MiCAR.

The Central Bank encourages firms seeking to provide services or products under MiCAR to commence engagement with it. ARTs and EMTs issuers should engage with relevant supervisors and firms seeking CASP authorisation should contact CASPAuthorisations@centralbank.ie. To find out more visit our industry Markets in Crypto Asset Regulation webpage.

Digital Operational Resilience Act (DORA)

On 27 December 2022, the Digital Operational Resilience Act (DORA) was published in the Official Journal of the EU. This includes a Regulation and a Directive on digital operational resilience for the financial sector focusing on the five key ICT areas:

- ICT Risk Management
- ICT related Incidents Management, Classification and Reporting
- Digital Operational Resilience Testing
- Managing of ICT Third-party Risk
- Information Sharing Arrangements

Being a European Regulation DORA will be directly applicable as EU law to a broad range of financial entities from **17 January 2025.**

The Central Bank held a DORA Industry Briefing on 6 November 2024 and further information on the event can be found here.

Updates on DORA will be published on the ESA websites, with summary updates posted on the Communications tab of the Central Bank of Ireland DORA web page.

2024 World Investor Week

World Investor Week (WIW) is a week-long, global campaign promoted by IOSCO to raise awareness about the importance of investor education and protection and highlight the various initiatives of securities regulators in these two critical areas.

During the course of WIW (7-11 October 2024), IOSCO members and supporters on six continents hosted a range of activities, such as launching investor-focused communications and services, promoting an increased awareness of investor education initiatives and facilitating workshops.

The Central Bank marked this year's WIW through a number of events, publications and updated consumer information in the 'Investing Your Money' section of the Consumer Hub on our website. This year's campaign themes were focused on:

- actions to prevent frauds and scams,
- technology and digital finance, and
- providing accessible and understandable information about the basics of investing.

Derville Rowland, Deputy Governor Consumer and Investor Protection in the Central Bank, spoke about these issues in a speech to the 37th International Investment Funds Association Conference in Dublin during WIW, where she talked about the Central Bank's consumer research on retail investors which found that disclosures and the provision of information is a challenge for retail investors.

WIW also placed a focus on the important topic of how we can contribute to creating the right conditions to encourage greater retail investing in Europe.

IOSCO
WORLD INVESTOR WEEK 2024

"In a world where consumers have so many new ways of interfacing with financial services and advice, we need to equip consumers not just to understand the basics of financial services but also the risks to which they are exposed in a digital environment."

Financial consumer protection and market conduct considerations of AI in finance – Remarks by Colm Kincaid, Director of Consumer Protection, 22 May 2024.

Fitness and Probity Updates

F&P Application Guidance update

The Fitness and Probity Individual Questionnaire (IQ), Application and PCF Roles Guidance was updated in June 2024. The updated guidance provides further information regarding the administration, user permissions and use of the online IQ submission via the Central Bank's Portal. The guidance now also provides information on reasons why Fitness and Probity IQ applications may be returned as incomplete.

Minimum Competency Code (MCC) for Applicant PCFs

If an applicant answers 'Yes' to Question 1.16 of the IQ application, and they are a Qualified Person, New Entrant or are availing of Grandfathering arrangements, they are required to complete Section 4 of the IQ. Applicants availing of Qualified Person or Grandfathering arrangements are required to upload documentary evidence of compliance with MCC in their IQ application. This includes copies of recognised qualifications or grandfathering statements and evidence of CPD compliance. Failure to upload sufficient documentation may result in your IQ application being returned as incomplete.

It is strongly recommended that applicants read the MCC in full before completing the questions in Section 4. If the applicant answers 'No' to any question in Section 4 of the application, that they do not meet the MCC requirements (for New Entrants and applicants availing of Grandfathering Arrangements), it is not possible to continue with the application. Please see guidance beginning on page 23, for further information regarding the MCC evidence requirements.

CF Certification and PCF Annual Confirmation 2025

Enhancements to the current F&P Regime under the Individual Accountability Framework (IAF) require regulated firms to proactively certify that individuals carrying out CF and PCF roles meet the Central Bank's standards of F&P.

The Certification Regulations have applied since 8 January 2024 and the first submission will be required in 2025.

Both the PCF Annual Confirmation and CF Annual Certification functionality will be open on the Portal from 1 January 2025 to facilitate your submissions for 2024. The CF Certification process will follow the same system steps as the PCF Annual Confirmation and will not require a document upload.

This guidance on how to submit your PCF Annual Confirmation will be updated to include the CF Annual Certification process and will be available on our website in December.

Consumer Research Report – Pension and Retirement Income Challenges for Consumers

The Central Bank has recently undertaken research to inform the wider debate on pension provision in Ireland. The research seeks to understand the extent to which consumers understand the challenges they face when planning for retirement and deciding on their pension options when they reach retirement age. We analysed key consumer groups' behaviours and attitudes based on a series of important pensions-related questions and a summary of our key findings are as follows:

- Consumers often have unrealistic expectations regarding their retirement needs
- When consumers are saving for a pension, many are not actively involved in the process and are uncertain about their future income needs during retirement; and
- Pensions can be seen as complex by consumers, leading to challenges in understanding pension concepts.

Individual Accountability Framework

The June issue of the Intermediary Times provided an overview of the Individual Accountability Framework (IAF), with a focus on the Conduct Standards pillar which sets out the standard of behaviour the Central Bank expects of firms and the individuals working within them. The Conduct Standards have been applicable since 29 December 2023 and apply across all regulated firms.

Senior Executive Accountability Regime (SEAR)

In addition to the Conduct Standards the IAF encompasses the SEAR pillar which became applicable to in-scope firms as of 1 July 2024 and includes, inter alia, Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client assets. To note, the SEAR is not applicable for Non-Executive Directors/Independent Non-Executive Directors until 1 July 2025.

The purpose of SEAR is to improve governance, performance and accountability in firms, setting out a new statutory Duty of Responsibility that is applicable to all PCF role holders at in-scope firms.

SEAR places obligations on firms and senior individuals within them, to set out clearly where responsibility and decision-making lies for their business and by setting out what those responsibilities entail.

SEAR sets out the 'Inherent Responsibilities' which are the core responsibilities intrinsic to a specific PCF role and 'Prescribed Responsibilities' that must be allocated to an individual in a PCF role at in-scope firms.

Firms must also consider 'Other Responsibilities', which capture any other material functions, business areas or projects to the extent that they are not captured by the Inherent and Prescribed Responsibilities.

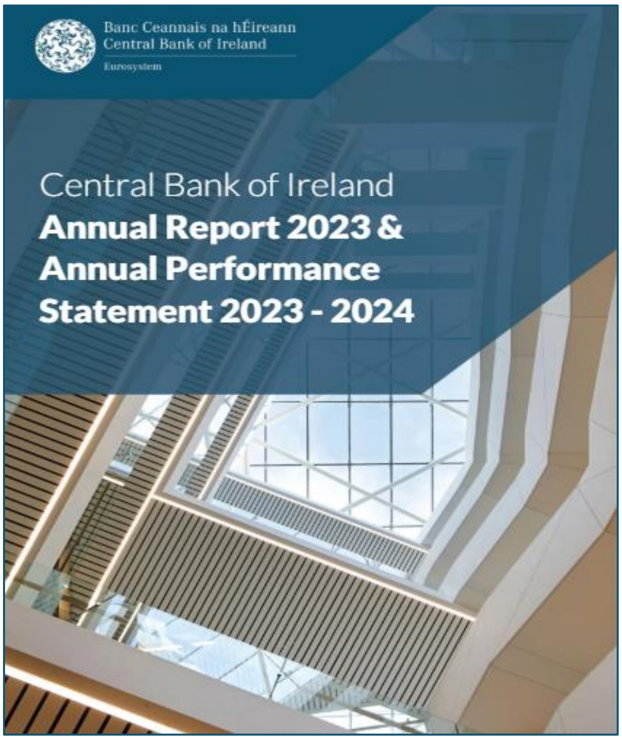
Firms must ensure that each individual in a PCF role at an in-scope firm has a documented Statement of Responsibilities and are required to produce a Management Responsibilities Map (the Map) setting out the key management and governance arrangements in a comprehensive, accessible and clear single source of reference.

SEAR Regulations which specify the responsibilities of Non-Executive Directors (NEDs) and Independent Non-Executive Directors (INEDs) will become effective from 1 July 2025, however firms will be required include all PCF role holders including INEDs/NEDs on the Map to ensure clarity regarding the governance arrangements within the firm. The Central Bank considers that NEDs and INEDs represent a key layer of challenge, governance and oversight to the activities of a firm. The oversight and challenge provided by NEDs and INEDs is an important aspect to the overall culture of the firm.

The Central Bank has issued SEAR Regulations and the related final Guidance on the IAF, and has also published questions from stakeholders to provide responses to queries received to-date.

Annual Report

On 30 May 2024, the Central Bank published its Annual Report and Annual Performance Statement for 2023.



This latest annual report includes familiar sections, describing the Central Bank's work and financial results for last year, as well as our priorities for the current year. There are also two new sections – the first describes the final disposal of the Central Bank's portfolio of Floating Rate Notes (see Box 1, page 18), whilst the second (at page 48), is a review of specific initiatives undertaken over the course of last year and how they are consistent with the orderly and proper functioning of financial markets.

Read Governor Makhlouf's blog post on the Annual Report on our website.

Consumer Research Bulletin - Buy Now Pay Later

Buy Now Pay Later (BNPL) is a form of consumer credit which has been growing in recent years. It represents a type of short-term unsecured borrowing that allows consumers to purchase goods now and pay for them at a future date. It is in this context that the Central Bank decided to carry out targeted consumer **research** in relation to BNPL products. Our research enables an improved understanding of consumer knowledge, attitudes and behaviours towards newer financial products such as BNPL, given they contain features that differ from traditional forms of credit.

Some key findings from the Central Bank's research on BNPL products are as follows:

- As a new and emerging form of credit, BNPL is not fully understood by consumers;
- The research found there is a lack of understanding that this is a form of credit rather than a payment arrangement and;
- That there are risks for consumers in using BNPL to pay for goods and services.

Central Bank of Ireland Strategy

June 2024 marked the half-way point in the implementation of our five-year Strategy (2022 –2026). We reviewed our operating context and progress, to ensure our strategic goals remain valid and responsive to the changes taking place within the economy and financial system. We concluded from this review that the strategic direction the Central Bank Commission set out in Our Strategy (2022 - 2026) remains valid. As we continue to pursue our underlying strategic goals over the coming three years, we have taken the opportunity to refresh our published Strategy, which is now effective up to the end of 2027. The refreshed Strategy (2025 – 2027) will continue to enable us to fulfil our Mission and Vision guided by the objective set out in the Central Bank Act 1942, which states that the Central Bank's *"constant and predominant aim shall be the welfare of the people as a whole"*.

Our Strategy (September 2024) | pdf 2629 KB

Our Strategy centres around four strategic themes.

Future-Focused

Being **Future-Focused** is critical to enabling the Central Bank to better understand, anticipate and adapt in the context of the far-reaching changes taking place within the economy and financial sector, with a particular emphasis on technological innovation, climate transition and geo-political change.

Open & Engaged

By being **Open & Engaged,** we are emphasising the critical priority for the Central Bank to listen to our stakeholders, engaging in dialogue and learning, so that we can contribute to building trust in the financial system and foster a wider understanding of the Central Bank's role.

Transforming

By **Transforming**, we aim to enhance how our organisation operates, so that we enable more efficient, effective, adaptive and innovative ways of working, leveraging the resources of One Bank while managing our core operating costs as our workload continues to increase in terms of volume and complexity. Central to this is the need to support our people to perform their roles individually and collectively, using data and technology to deliver efficient and effective processes, in an environment that is conducive to living our values.

Safeguarding

Supported by the other strategic themes, **Safeguarding** reflects our steadfast commitment to strengthen the design, implementation and operation of our core policy and supervisory frameworks. It is through these frameworks that we deliver on our statutory functions.

Public Sector Human Rights and Equality Duty

In developing our five-year Strategy (2022 – 2026) (PDF 5.69MB), and as part of the review we undertook at the halfway point in 2024 (PDF 2.57MB), the Central Bank considered its role under the Public Sector Human Rights and Equality Duty, and conducted an assessment of the equality and human rights issues relevant to our purpose and functions. We also outlined an action plan we are progressing to meet our Public Sector Human Rights and Equality Duty.

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