December 2021

Ireland Update – CBI Dear CEO Letter on MiFID Suitability Requirements

Background

On 1 December 2021 the Central Bank of Ireland ("**CBI**") issued a [Dear CEO Letter](#) (the "**Letter**") detailing the findings of a review undertaken by the CBI as part of a Common Supervisory Action coordinated by the European Securities and Markets Authority ("**ESMA**") into firms' compliance with the suitability requirements under MiFID II (see ESMA's July 2021 public statement on the review [here](#)). The Letter is to be read alongside the ESMA public statement.

The review involved an assessment of MiFID authorised firms and credit institutions which provide investment services which require an assessment of suitability to be undertaken. The purpose of the Letter is to provide feedback to industry on the findings of the review and to outline the CBI's expectations in relation to the application of the MiFID II suitability requirements.

The Letter restates the obligation that *"when providing investment advice and/or portfolio management, firms are required to take all reasonable steps to ensure that a client's investments align to their objectives and personal circumstances."*

See also: ESMA Guidelines on certain aspects of the MiFID II suitability requirements (May 2018, ESMA35-43-869), available [here](#), and ESMA MiFID II Supervisory briefing – Suitability (November 2018, ESMA35-43-1206), available [here](#)

Main Findings

1. Firms need to adopt a client-focused approach

An absence of a personalised, comprehensive and client-focused approach was evident in inadequate training frameworks, poor reporting and disclosures to clients, and a failure to establish clear procedures for the identification of potentially vulnerable clients.

The CBI identified certain instances where speed and convenience was prioritised over a comprehensive suitability assessment. Where a firm utilises digital channels in the suitability assessment, it must meet the same high standards of compliance and investor protection.

2. Firms must improve their assessment of clients' knowledge and experience, financial situation and investment objectives

A key requirement for firms is to collect all necessary information, particularly information relating to clients' financial situation and their capacity to withstand losses, in order to inform the suitability assessment, and it was not always evident how firms collected and considered this information.

Firms should have clear procedures for calculating clients' capacity for loss, to ensure clients do not invest in products that are outside their financial capacity. The CBI also noted shortcomings with firms' recordkeeping.

3. Suitability Reports need to be sufficiently detailed and personalised

The Suitability Report should be a personalised document that enables the investor to understand how and why a product has been deemed suitable for them, based on their individual circumstances.

The review found instances where Suitability Reports were not sufficiently detailed or personalised, with information on the client's financial situation sometimes missing or limited, and relied on automated templates and standardised wording that provides little value to clients.

Firms must reassess their suitability report to ensure they are avoiding a generic, 'tick-box' approach.

4. Controls on 'Exception' Processes need to be stricter

The Letter states the CBI's concern at the quality of oversight of 'exception' processes, whereby a client insists on proceeding with the transaction at their own initiative and against the firm's suitability advice.

Firms must have documented processes in place which demonstrate the transaction was initiated by the client and the review found instances where there was inadequate rationale or records to support this.

Firms also failed to demonstrate that they have effective training or oversight procedures in place to ensure sales advisors are not unduly influencing clients to avail of these exceptions and invest in unsuitable products.

Actions Required

All Irish-authorised MiFID firms and credit institutions which provide portfolio management and advisory services to retail clients are required to conduct a thorough review of their individual sales practices and suitability arrangements.

This review must be documented and must include details of actions taken to address findings in the ESMA public statement and the Letter.

This review should be completed and an action plan discussed and approved by the board of each Firm by end of Q1 2022.

The CBI may have regard to the consideration given by a Firm to the matters raised in the ESMA public statement and the Letter in the course of future supervisory engagement.

Key Contacts

If you would like to discuss any of the above, please contact the below or your usual Walkers contact.

Niall Esler
Partner
T: +353 1 863 8517
E: niall.esler@walkersglobal.com

Shane Martin
Of Counsel
T: +353 1 470 6673
E: shane.martin@walkersglobal.com

Conor Daly
Senior Associate
T: +353 1 470 6684
E: conor.daly@walkersglobal.com

Bill Laffan
Associate
T: +353 1 863 8511
E: bill.laffan@walkersglobal.com