



February 2015

Themed Inspection of MiFID authorised Investment Firms regarding the provision of information to clients in relation to costs and charges

On 18 December 2014, the Central Bank published the results of a thematic review in a letter (the “**Letter**”) to industry participants that it completed on investment firms subject to the requirements of the European Communities (Markets in Financial Instruments) Regulations 2007 (the “**MiFID Regulations**”) and where relevant, the Consumer Protection Code (the “**Code**”) ¹. In particular, the aim of the thematic review was to assess and evaluate how investment firms provide information to clients on direct costs and charges applied by the investment firm and to assess the level of compliance by investment firms with the requirements relating to costs and charges which are set out in the MiFID Regulations and the Code.

The purpose of the Letter is to provide feedback in relation to areas of concern identified by the Central Bank following its thematic review. The findings in the Letter will therefore be relevant to all investment firms.

Legislative Requirements

The MiFID Regulations contain prescriptive rules with regards to information about costs and charges which must be provided to

¹ The Consumer Protection Code only applies to MiFID firms when they are providing investment business services authorised under the Investment Intermediaries Act 1995 (as amended).

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clients prior² to the provision of an investment service and on an on-going basis³. In particular, Regulation 92 provides that an investment firm shall provide its retail clients and potential retail clients with (amongst other things) information that includes the “*total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm*”.

Regulation 77(2)(e) requires that where an investment firm provides this information via a website “the information must be accessible continuously by means of that website for such periods of time that the client may reasonably need to inspect it”.

The Code also contains detailed information on the information about costs and charges which must be provided to consumers prior to the provision of a service and on an on-going basis. In addition, the Code provides that a regulated entity must display in its public offices, in a manner that is easily accessible to consumers, a schedule of fees and charges imposed by that regulated entity. If the regulated entity has a website, its schedule of fees and charges must also be made publically available through placing this schedule on its website.

Review Findings

Overall the Letter provides that the findings of the thematic review raised concerns from a consumer protection perspective. The main issues identified can be divided into two different headings;

A. Provision of Information on Costs and Charges

- ❑ Weaknesses in the presentation of information provided to clients on costs and charges. In particular the Central Bank noted that such information was presented in a number of different documents making it difficult for clients to understand the total charges applied. In addition, the Central Bank noted that generic and non-specific disclosures such as a general statement that costs and charges may apply (rather than providing specific details of the level of direct fees that may be applied by the firm and/or the precise basis upon which the fees will be levied) is not sufficient.
- ❑ Failure to provide adequate information on costs and charges. Information must clearly refer to the possibility that other costs and charges (such as third party charges and taxes) may apply. In addition, firms should disclose the basis for the calculation of costs so that costs levied can be verified by the client.
- ❑ Failure to provide adequate and/or timely notification to clients of material changes to costs and charges. Any increases to or additional costs and charges must be notified in advance to

² Regulation 76,77,81 & 92

³ Regulation 96 &101

clients whereby 30 days prior notice must be given to clients Separately, notification of such increases/additional costs must be clearly identified to clients; e.g. updating the relevant pages of a website is not sufficient.

- ▣ Firms must present all information on costs and charges using consistent terminology and presentation.
- ▣ Inadequate reporting to clients. The MiFID Regulations provides that any management or other costs must be reported to the client periodically and at a minimum on an annual basis.
- ▣ Firms must monitor costs and charges applied to accounts to ensure that they are correct.

B. Unfair Terms in Consumer Contracts

- ▣ Firms should review their customer contract documentation and remove any terms which seek to limit the firm's financial liability to clients in a potentially unfair manner.

Next Steps

All investment firms should review their systems and controls in light of the Letter and take any appropriate steps to ensure compliance with the recommendations set out in the Letter. The Central Bank will have regard to the Letter in assessing investment firms' future compliance with the MiFID Regulations and/or the Code.

A copy of the Letter is available at this link;

<http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Provision%20of%20Information%20on%20Costs%20and%20Charges%20Industry%20Letter.pdf>

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