

Marketing MiFID investment products

25 November 2024

Action points

The Central Bank of Ireland (“**Central Bank**”) expects all Irish authorised MiFID investment firms,¹ credit institutions and fund management companies providing MiFID II services to retail clients (“**Firms**”) to:

(a) document their review of their marketing and advertising practices against the Dear CEO letter titled - Common Supervisory Action on the MiFID Marketing Communications Requirements (the “**Letter**”)² and the related European Securities and Markets Authority report³; and

(b) by **31 January 2025**, have an action plan to address gaps shown by their review which should be discussed, approved by the board of directors and reflected in the minutes of a board meeting.

Firms⁴ should also read the Central Bank’s Consumer Research Bulletin on Marketing and Advertising Investment Products (the “**Report**”).⁵

Central Bank findings

The Central Bank found the following six weaknesses with respect to Firms’ marketing and advertising materials.

1. content was not clearly identifiable as marketing and advertising content. The Central Bank considers:

“any material, regardless of the means of dissemination, designed to promote or sell a financial instrument and/or an investment service, as marketing material”

This can include content which seek to influence retail investors’ behaviour through ‘educational material’ or ‘thought leadership’ content;

2. poor governance and controls with respect to marketing and advertising policies and procedures;

3. undocumented and ill-defined outsourcing arrangements associated with outsourced marketing and advertising functions;

4. deficiencies content, including unbalanced and potentially misleading content, especially with respect to contracts for differences (“**CFDs**”);

5. over reliance on an initial review process to identify any errors or omissions in marketing and advertising content and weak content and compliance review functions; and

6. gaps in identification of a target audience.

Central Bank expectations

The Central Bank expects Firms to:

- clearly identify marketing and advertising material (including ‘educational material’ or ‘thought leadership’ content) as such, for example, by placing ‘This is an Advertisement’ in bold font on marketing

materials and using a disclaimer or description on social media channels to state whether the published content should be considered to be marketing materials;

- ensure marketing materials (including digital materials) are fair, clear and non-misleading. For example, refer to relevant risks and make sure information is available for more than a short period of time;
- have and document relevant outsourcing policies, service level agreements and oversee such arrangements. The Central Bank was critical of Firms outsourcing marketing and advertising function to a group entity without having a documented service level agreement in place (which is at odds with Article 31(3) of the MiFID II Delegated Regulation). Such a service level agreement should set out the respective rights and obligations of both the Firm and of the outsourced service provider and should: *“capture the methods and procedures for assessing the standard of the outsourced service provider, the metric(s) for measuring the quality of the service provided and the Firm’s tolerance for error(s), if any.”*

When outsourcing important operational functions, Firms must take reasonable steps to avoid undue additional operational risk, even with respect to an intra-group outsourcing arrangements;

- regularly evaluate relevant systems, internal control mechanisms and arrangements and remedy any gaps therein. Firms should monitor published marketing and advertising content and compliance function review; and
- direct marketing materials at an identified target audience. The Central Bank expects Firms to have defined the characteristics of the target audience for all marketing and advertising content (including online materials) and measure the effectiveness of their content reaching this audience.

How can we help?

McCann FitzGerald LLP is a premier law firm in Ireland and stands ready to assist Firms by reviewing and updating Firms’ internal controls and risk management frameworks, training materials, outsourcing arrangements and policies and procedures associated with Firms’ marketing and advertising materials.

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1. Firms regulated under the European Union Market (Markets in Financial Instruments) Regulations 2017 (the “MiFID Regulations”).
 2. Available at: https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/investment-firms/mifid-firms/regulatory-requirements-and-guidance/dear-ceo-letter-common-supervisory-action-on-mifid-ii-marketing-communications-requirements.pdf?sfvrsn=c8b2661a_9 .
 3. Available at: https://www.esma.europa.eu/sites/default/files/2024-05/ESMA35-335435667-5931_Final_Report_on_the_2023_Common_Supervisory_Action_and_Mystery_Shopping_Exercise_on_marke
 4. Firms regulated under the European Union Market (Markets in Financial Instruments) Regulations 2017 (the “**MiFID Regulations**”).
 5. Available at: https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/consumer-research-bulletin-marketing-and-advertising-investment-products.pdf?sfvrsn=44b1661a_6 .

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