



10 October 2024

## Re: Common Supervisory Action on the MiFID II Marketing Communications Requirements

Dear Chief Executive Officer

The Central Bank of Ireland (Central Bank) recently conducted a thematic review which examined Investment Firms' application of the Marketing Communications<sup>1</sup> disclosure requirements as set out in the European Union (Markets in Financial Instruments) Regulations 2017 (the Regulations)<sup>2</sup> and Commission Delegated Regulation (EU) 2017/565 (together MiFID II). The purpose of this letter is to provide feedback to industry on the findings of the review and to outline the Central Bank's expectations in relation to the application of the MiFID II Marketing and Advertising requirements.

Marketing communications and advertisements can play a key role in determining consumer behaviour and influencing investment decisions. For many retail investors, investment decisions can be significantly influenced by information conveyed in marketing communications and advertisements, with younger or less experienced investors operating online being particularly vulnerable, as they may not understand the characteristics and risks of the products in which they are investing. Firms are required to ensure that all marketing communications and advertisements are clearly identifiable as such, are fair, clear and not misleading<sup>3</sup>, are presented in a way that is likely to be understood by a retail investor and are appropriate in terms of content and distribution channel for the target audience. Any shortcomings in the manner in which firms are communicating with clients (existing and potential) could adversely impact investment decisions.

Deficiencies were identified in the governance and control frameworks in place in some Firms during the course of the review, in particular in cases where some or all of the Marketing and Advertising function is outsourced, and published marketing and advertising content relating to a small number of Firms did not meet the expected standard of being fair, clear and not misleading. Throughout the course of the review, Firms regularly referred to their shift away from 'product' or 'service' specific content, and the move towards, for example, 'educational material' and 'thought leadership' content. There were also noticeable differences in what Firms considered marketing and advertising content to be, and the majority of Firms are not clearly identifying their marketing and advertising content as such.

The Central Bank views any material, regardless of the means of dissemination, designed to promote or sell a financial instrument and/or an investment service, as marketing material. Investors need to have confidence that firms' marketing and advertising communications are developed, designed and

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<sup>1</sup> Marketing Communications including advertisements, herein referred to as Marketing and Advertising.

<sup>2</sup> S.I. No. 375 of 2017 which are the Regulations transposing the Markets in Financial Instruments Directive (MiFID II) 2014/65/EU into Irish law.

<sup>3</sup> Including being balanced in terms of the presentation of benefits and risks.



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.

The review is therefore an important piece of work in both addressing and seeking to mitigate key investor protection risks in the investment sector, particularly in light of the digitalisation of financial services and the significant shift in the way in which financial services are delivered and accessed.

### **Methodology**

The review was conducted as part of a Common Supervisory Action (CSA) coordinated by the European Securities and Markets Authority (ESMA). The CSA involved an assessment of MiFID Investment Firms' and Credit Institutions' compliance with the Marketing and Advertising requirements in the context of the provision of MiFID II services to retail clients. The CSA was undertaken simultaneously by National Competent Authorities (NCAs) throughout the EEA. Central to the exercise was the formulation of a common methodology and framework, alongside clear supervisory expectations, which allowed NCAs to assess firms' compliance with the relevant requirements in a consistent manner, ensuring a convergent supervisory outcome was achieved.

The CSA included a representative sample of MiFID Investment Firms and Credit Institutions (the Firms) in Ireland that, as at April 2023, provided investment services to 92% of all retail clients. The review process included both a desk-based review and inspections of Firms in scope. On completion of the CSA, a report detailing the Central Bank's findings was submitted to ESMA. The findings of the review, which are highlighted in the [ESMA report on the application of the MiFID II Marketing and Advertising requirements](#) (ESMA Report), incorporate the findings from the Central Bank's own supervisory analysis and those of other NCAs, and set out a number of shortcomings and areas where improvements are required. These findings are broadly consistent with the findings of the Central Bank, and the ESMA Report should be read in conjunction with this letter.

A number of NCAs, including the Central Bank, also conducted a Mystery Shopping Exercise (MSE), based on an agreed methodology, that complemented the CSA and sought to enhance their understanding of how investors engage with marketing and advertising content published by Firms. The Central Bank has published [a report on the findings of the MSE it conducted \(the Consumer Research Bulletin\)](#), and Firms should also review the findings set out in the Consumer Research Bulletin as they provide valuable insights into practices that can cause marketing and advertising communications to be unfair, unclear or misleading for the investor. The ESMA Report incorporates the findings from the Central Bank's MSE and those of other NCAs.

NCAs will continue to engage in follow up actions based on findings within each jurisdiction. In the case of the Central Bank, this includes engaging directly with those Firms where mitigating action is required to improve their investor protection frameworks. The Central Bank has issued a number of Risk Mitigation Programmes (RMPs) requiring Firms to take specific action on foot of our findings.



## **Core Findings**

The ESMA Report highlights a number of key investor protection weaknesses. The categories of findings set out below are aligned to those published by ESMA, although the findings set out below are a reflection of the supervisory findings of the Central Bank.

The core findings arising from the CSA on the Marketing and Advertising requirements related to:

### **1. *Marketing and Advertising Content not Clearly Identifiable as Such***

The majority of Firms were not clearly identifying all marketing and advertising content as such and were therefore not communicating in an effective or transparent manner with clients (existing and potential).

### **2. *Poor Governance & Controls***

While most of the Firms reviewed have documented policies and procedures in respect of Marketing and Advertising in place, deficiencies were noted in the governance and control frameworks articulated therein. This was particularly prevalent in cases where Firms have outsourced some or all of the Marketing and Advertising function, and there were notable gaps in the arrangements of half of the Firms included in the review who outsource some or all of this function.

### **3. *Outsourcing Arrangements***

A number of Firms who outsource some or all of the Marketing and Advertising function to a parent company or group entity do not have a documented service level agreement (SLA) in place. Firms were unable to define the arrangements they have in place with the outsourced service provider, and to demonstrate how they measure the quality of the outsourced service they receive in respect of the Marketing and Advertising Function.

### **4. *Deficiencies in Published Marketing and Advertising Content***

Cases of imbalanced, unclear and potentially unfair or misleading published content on digital channels were identified in a small number of Firms. Furthermore, some Firms are not adhering to their obligations with respect to risk warnings relating to Contracts for Differences (CFDs<sup>4</sup>), by not including the relevant risk warning in a compliant manner in all published content.

### **5. *Monitoring of Published Marketing & Advertising Content and Compliance Function Review***

There is an over-reliance on the initial review and approval process to identify any errors or omissions in marketing and advertising content. Furthermore, the Compliance function in a number of Firms is not effectively involved in the marketing and advertising process post-publication.

### **6. *Gaps in identification of Target Audience***

Considerable variances were noted in Firms' approaches to defining the characteristics of the investors that are intended to receive marketing and advertising content, and ensuring that content is directed towards this identified target audience.

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<sup>4</sup> Central Bank of Ireland CFD Intervention Measure.



**Schedule 1** to this letter provides further detail on the Central Bank's key findings and expectations in respect of the CSA on Marketing and Advertising requirements, together with good practices observed.

**Action Required:**

It is the Board's responsibility to ensure that robust governance, internal control and oversight arrangements are in place, and that sufficient resources are deployed, to ensure that the firm is in a position to demonstrate its compliance with all relevant regulatory requirements on a continuous basis. In light of the findings of the review, the Central Bank requests all Irish authorised MiFID Investment Firms, Credit Institutions and Fund Management companies providing MiFID II services to retail clients to:

1. Review their Marketing and Advertising practices against the ESMA Report, and the findings, expectations and good practices set out in **Schedule 1** of this letter. This review must be documented and must include details of actions taken to address the findings in the ESMA Report and this letter. This review should be completed and an action plan discussed and approved by the Board of each Firm by **31 January 2025**, with the minutes of the relevant Board meeting reflecting the discussions and approval of the Board.
2. Where the Firm was in scope of the review and received formal mitigating actions, the feedback in the ESMA Report and the findings, expectations and good practices set out in this letter should be considered in conjunction with those mitigation actions.

The findings set out in this letter are not exhaustive and the Central Bank reminds Firms of their obligation to comply with all relevant requirements of MiFID II. The Central Bank has observed some self-initiated processes to improve and strengthen investor protection frameworks by certain Firms in the investment sector. However, in other cases, significant enhancements to frameworks continue to be primarily made following the identification of concerns by the Central Bank, and on foot of related RMPs. The Central Bank is of the view that this is indicative of a lack of embeddedness of an appropriate risk and compliance framework, and investor focused culture, within certain Firms.

The Central Bank expects all Firms to adopt a proactive approach to the continuous evaluation of the effectiveness of all of their arrangements and practices, including those relating to Marketing and Advertising requirements, to ensure that they are meeting the highest standards of investor protection and delivering fair outcomes that seek to secure their clients' interests.

The Central Bank continues to monitor developments in the retail investment market<sup>5</sup>. In circumstances of non-compliance by a Firm with any regulatory requirements relevant to the matters raised in this letter, the Central Bank may, in the course of future supervisory engagement, or when exercising its supervisory and/or enforcement powers in respect of such non-compliance, have regard to the consideration given by a Firm to the ESMA Report and the matters raised in this letter and the Consumer Research Bulletin.

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<sup>5</sup> [Regulatory & Supervisory Outlook Report 2024](#).



Should you have any queries regarding the content of this letter please contact [mifidconductofbusiness@centralbank.ie](mailto:mifidconductofbusiness@centralbank.ie).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Des Ritchie', written over a light grey dotted background.

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**Des Ritchie**

**Head of Division**

**Consumer Protection – Investment Firms, Intermediaries & Client Assets Division**



## Schedule 1

### CSA on Marketing and Advertising - Findings and Expectations

The Central Bank’s key findings and expectations, together with any good practices observed are set out in the following tables:

<b>1. Marketing and Advertising Content not Clearly Identifiable as Such</b>	
<b>Overview:</b>	Under Regulation 32(3) of the Regulations, Firms are required to ensure that all marketing and advertising content is clearly identifiable as such.
<b>Findings:</b>	<ul style="list-style-type: none"> <li>• The Central Bank observed that the majority of Firms in scope of the review do not classify all published content as, for example, a 'Marketing Communication' or an 'Advertisement', as required by MiFID II.</li> <li>• Some Firms include a sentence within a detailed disclaimer stating that the communication '<i>...is classified as a marketing communication...</i>', however, the manner in which this information was included in the disclaimer is not considered to be prominent and/or clearly identifiable.</li> <li>• The review identified divergent approaches with respect to what Firms consider to be marketing and advertising content. Some Firms have a documented definition in this regard, and some do not. However, even where Firms have a documented definition as to what they consider to be marketing and advertising content, this content was not clearly identifiable as such. This is not in line with MiFID II requirements.</li> <li>• Firms are seeking to influence retail investors' behaviour through, for example, 'educational material' or 'thought leadership' content, and are not clearly identifying this as marketing content where appropriate to do so.</li> </ul>
<b>Good Practices Identified:</b>	<p>Some of the good practices noted by the Central Bank include:</p> <ul style="list-style-type: none"> <li>• Clearly identifying marketing and advertising content as such by the use of prominently placed text boxes containing the wording 'This is a Marketing Communication' or 'This is an Advertisement' in bold font.</li> <li>• Employing the use of a checklist to ensure marketing and advertising content is appropriately classified and clearly identifiable as a marketing communication. The content and completed check list are subject to ultimate review and approval by the Compliance function prior to publication.</li> </ul>



<b>Central Expectations:</b>	<b>Bank</b>	<p>The Central Bank views any material, regardless of the means of dissemination, designed to promote or sell a financial instrument and/or an investment service, as marketing material. Any such material should be clearly identifiable as such. This expectation should be clearly articulated and reflected in Firms' Marketing and Advertising policies and procedures. These policies and procedures should be updated (to the extent necessary) to reflect any legislative changes to the MiFID II Marketing and Advertising Requirements arising, for example, as a result of amendments to MiFID II on foot of the EU Commission's Retail Investment Strategy, or updated ESMA Guidelines / Q&amp;As. These policies and procedures should also be updated to reflect the 'Guidance on Securing Customers' Interests' when finalised and published by the Central Bank in the context of the revised Consumer Protection Code<sup>6</sup>.</p> <ul style="list-style-type: none"><li>• Firms should clearly and prominently identify all published marketing and advertising content as, for example, a 'Marketing Communication' or an 'Advertisement'.</li><li>• Social Media channels should include a description/disclaimer to state that published content should be considered to be marketing material.</li><li>• Firms should carry out regular reviews of published marketing and advertising content to ensure that it is clearly and prominently identifiable as such, and that all information included therein is fair, clear and not misleading, whether disseminated via digital or more traditional means.</li><li>• Firms are reminded that any published content, whether classified as marketing content (having regard to the expectation set out above), thought leadership content or educational content, should be subject to the same level of governance and oversight, and should always seek to secure investors' interests and support them to make informed investment decisions.</li></ul>
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## 2. Poor Governance and Controls

<b>Overview:</b>	<p>Article 21(1) of the MiFID II Delegated Regulation sets out that Firms are required to establish, implement and maintain decision-making procedures and an organisational structure, which clearly and in a documented manner, specifies reporting lines and allocates functions and responsibilities. Firms should establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Firm.</p>
<b>Findings:</b>	<p>The Central Bank observed that, while the majority of Firms have policies and procedures in place in respect of the Marketing and Advertising function, there were considerable variances in the governance and control frameworks articulated therein, particularly in cases where Firms have outsourced some or all of the Marketing and Advertising function. For example:</p> <ul style="list-style-type: none"><li>• Marketing and Advertising policies and procedures are in place, but do not set out an appropriately robust internal control environment.</li></ul>

<sup>6</sup> In the context of the revised Consumer Protection Code, MiFID Firms will be expected to consider and apply the 'Guidance on Securing Customers' Interests' in the context of their obligation to 'act honestly, fairly and professionally in accordance with the best interests of its clients' under Regulation 31 of the Regulations.



- Some Firms, although able to demonstrate the internal control environment throughout the course of the review, did not have their control environment set out in a documented manner in a policy or procedure document.
- Some Firms had implemented a risk-based approach to the review and approval of marketing and advertising content, whereby the First Line of Defence or Subject Matter Experts reviewed and approved content in place of the Compliance function. There was clearly documented guidance in place setting out when Compliance function sign off was required.
- For all Firms, the review and approval process for marketing and advertising content did not differ regardless of the communication channel used, for example, traditional printed media versus social media.
- Some Firms do not have a specific policy or specific guidance in place in respect of digital marketing and advertising, for example the use of social media.

**Good Practices Identified:**

Some of the good practices that were noted include:

- Firms' Marketing and Advertising policies and procedures are reviewed and approved by the Board annually.
- Some Firms make use of a Compliance function approved checklist at both the content creation stage and the review and approval stage of the marketing and advertising process.
- Firms conduct training sessions on the applicable regulatory framework regarding Marketing and Advertising requirements for relevant employees on an annual basis.
- The Business unit, Marketing team and Compliance function oversee the production and publication of compliant marketing and advertising content, with the Compliance function providing final sign off prior to publication.
- Some Firms have documented policies and procedures in place in respect of the provision of information to investors who find themselves in vulnerable circumstances.





<b>Central Bank Expectations:</b>	<p>Firms are reminded that they should adopt and embed an investor focused culture, and this should be reflected in how firms seek to secure the interests of clients or potential clients, by communicating properly and effectively to them.</p> <ul style="list-style-type: none"><li>• Firms must ensure that they have robust Marketing and Advertising governance and oversight arrangements in place, and communicate effectively and in a responsible way, ensuring that information is fair, clear, not misleading and seeks to secure investors' interests at all times.</li><li>• Firms' policies and procedures should set out appropriately robust internal controls in respect of the Marketing and Advertising function and, should clearly articulate the governance framework and decision-making process, including setting out roles and responsibilities, regarding the production, approval, publication, review and monitoring of marketing and advertising content.</li><li>• The Central Bank also expects Firms to clearly define who is ultimately responsible for approving marketing and advertising content.</li><li>• Firms' control functions and senior management need to be cognisant of the dynamic and rapidly changing online environment, and must ensure that the Firm's policies, procedures and internal control mechanisms ensure the Firm's compliance with its regulatory obligations regardless of the communications channel.</li><li>• Firms are expected to understand and take account of the drivers of vulnerability that are relevant to the business of the Firm, and to design their systems, processes and procedures, including those relating to Marketing and Advertising, so that investors who find themselves in vulnerable circumstances are reasonably protected from poor outcomes.</li></ul>
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### 3. Outsourcing Arrangements

<b>Overview:</b>	<p>Article 31(3) of the MiFID II Delegated Regulation sets out that the respective rights and obligations of the investment firm and of the outsourced service provider shall be clearly allocated and set out in a written agreement.</p> <p>Furthermore, Regulations 23(3)(g) and (h) of the Regulations require that Firms shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the Firm's compliance with all obligations.</p>
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**Findings:**

The Central Bank observed during the review that:

- Half of the Firms in scope of the review that outsource some or all of the Marketing and Advertising function to a parent company or group entity do not have a documented Service Level Agreement (SLA) in place.
- In the absence of a documented SLA:
  - Firms were unable to define roles, responsibilities, functions and reporting lines for either the Firm or the outsourced service provider;
  - there were instances where Firms were unable to demonstrate any oversight or control in respect of marketing and advertising content published by their parent company or group entity; and
  - Firms were unable to demonstrate the metric(s) for measuring the quality of the outsourced service being provided. This is of particular concern where Firms play no role in the design or creation phase of marketing and advertising content.
- In most cases, no insights are provided or shared with the Firm by the outsourced service provider concerning the effectiveness of published marketing and advertising content. Therefore, Firms were unable to demonstrate if published content, for example, reached the identified target audience.

**Good Practices Identified:**

- Where some or all of the Marketing and Advertising function was outsourced to a parent company or group entity, there was a robust, clear and detailed documented SLA in place with **each** entity to which the Firm outsourced any activities. Each SLA articulated the metric(s) for measuring the quality of the outsourced service being provided, and the Firm's tolerance for errors.
- Firms were able to demonstrate a due diligence selection process for outsourced service provider(s). This was documented in an overarching outsourcing policy or procedure.
- Outsourced service providers were reviewed annually to ensure continued suitability to provide the outsourced service.
- Where Firms outsourced the distribution of marketing and advertising content to third parties:
  - third parties were selected based on their background, experience, qualifications and ability to effectively represent the Firm.
  - third parties were not permitted to edit approved marketing and advertising content provided by the Firm. This was documented in a SLA and, in some instances, approved content is made available to the third party only in PDF or a printed format.
  - third party service providers were subject to annual reviews to ensure continued competence and suitability to represent the Firm.



<b>Central Expectations:</b>	<b>Bank</b>	<p>As set out in Article 31 of the MiFID II Delegated Regulation, Firms remain fully responsible for discharging all of their obligations when outsourcing critical or important operational functions, and the outsourcing of said functions must not result in the delegation of responsibility by senior management of the Firm. It is imperative that Firms document the internal control environment they have in place to ensure the effective oversight of outsourced services. Firms' documented control environments must also consider the <u>Central Bank's Cross-Industry Guidance on Outsourcing</u>.</p> <p>Firms are expected to:</p> <ul style="list-style-type: none"><li>• Have a comprehensive, overarching outsourcing policy in place, which is reviewed and approved by the Board at least annually.</li><li>• Have in place a detailed, documented SLA with each outsourced service provider, where the respective rights and obligations of both the Firm and of the outsourced service provider<sup>7</sup> are clearly articulated. The SLA should also 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.</li><li>• Effectively supervise the outsourced function and manage any risks associated with the outsourced service and service provider. To this end, Firms should retain the necessary expertise and resources to supervise the outsourced functions effectively and mitigate any associated risks.</li><li>• Consider an intra-group service provider in the same vein as an external third party service provider, and apply the same rigor in any assessment of such intra-group outsourcing arrangements.</li></ul>
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#### 4. Deficiencies in Published Marketing and Advertising Content

<b>Overview:</b>	Article 44 of the MiFID II Delegated Regulation sets out the requirement that information, including marketing communications, must be fair, clear and not misleading.
<b>Findings:</b>	<p>The review identified cases of imbalanced, unclear and potentially unfair or misleading published content on digital channels in a small number of Firms. For example:</p> <ul style="list-style-type: none"><li>○ The use of USD denomination in an advertisement disseminated in the EEA without a sufficient explanation to ensure the characteristics of the product being advertised were likely to be understood.</li><li>○ Social media content that was imbalanced in nature, referring only to potential benefits and not referencing relevant risks.</li><li>○ A practice whereby posts were linked to 'Stories' on Instagram. An Instagram Story is an in-app feature that allows users to share ephemeral content that is visible for a short amount of time, i.e. 24 hours. The post remains in the Firm's feed, however, the linked content is visible <b>only</b> for 24 hours.</li></ul>

<sup>7</sup> Where a Firm engages the services of an Influencer to engage in marketing and advertising activities on behalf of the Firm, the Influencer should be considered a third party outsourced service provider and a documented SLA should be in place between the parties.



- In a small number of Firms, broken or defunct hyperlinks were still accessible on websites.
- A practice whereby a notice that 'Restrictions Apply' was included on social media posts, without any explanation as to what those restrictions are, who they are relevant to and where further information could be obtained.
- Where Firms use the services of Influencers to engage in marketing and advertising activities on their behalf, they do not conduct post publication reviews of the Influencers' published content to ensure compliance with the Firm's own policies and procedures, or the requirements set out in MiFID II.
- Some Firms engage in a practice of linking big name brands to brand neutral posts in order to influence investor behaviour.
- Some Firms are not adhering to their obligations with respect to risk warnings relating to Contracts for Differences (CFDs<sup>8</sup>), by either not including the relevant risk warning at all, or not including it in a compliant manner in all published content.

**Good  
Identified:**

**Practices**

- A clearly documented sign off procedure, with the Compliance function playing a key role in the sign off of all marketing and advertising content, ensuring that it is compliant with all relevant requirements<sup>9</sup>, is fair, clear and not misleading, is presented in a way that is likely to be understood by a retail investor and is appropriate for the target audience to whom it is directed, or by whom it is likely to be received.
- Some Firms make use of a Compliance function approved checklist at both the content creation stage and the review and approval stage. The use of the checklist, in consideration of the Firm's investor protection obligations, led to fewer instances of imbalanced, unclear or potentially unfair or misleading marketing and advertising content.
- A clear audit trail is maintained of the approval of all published marketing and advertising content.
- The Compliance function documents the outcome of the post-publication review of marketing and advertising content by using a checklist. The checklist signposts an escalation path in respect of the identification of deficiencies, should any be identified.
- Reviewing content in a 'staged' online environment prior to publication to ensure compliance with relevant regulatory requirements.
- All information was presented using the same font size and colour, the same 'tone of voice' was used throughout and information in respect of risks and benefits was equally visible, balanced and understandable in a consistent manner across all distributions channels / means of dissemination.
- The inclusion of a 'Glossary' to explain abbreviations and financial terms.
- The use of Instagram's alternative in app features to ensure 'linked' content remains permanently and easily accessible.

**Central  
Expectations:**

**Bank**

When communicating online, Firms can instantly reach not only an intended target audience, but also a wider unintended audience. Given the ease and immediacy with

<sup>8</sup> [Central Bank of Ireland CFD Intervention Measure](#).

<sup>9</sup> Including those set out in the Sustainable Finance Disclosure Regulation (SFDR), where relevant.



which Firms can reach clients and potential clients, Firms must ensure that marketing and advertising content is as fair, clear and not misleading on digital platforms, as on more traditional communication channels. Digitalisation has brought new types of distribution strategies to Firms' marketing and advertising toolkits, and Firms must ensure that digital tools and practices are developed, designed and delivered in a manner that seeks to secure their clients' interests.

- The Central Bank expects Firms to carry out ex-ante and ex-post reviews of marketing and advertising content to ensure compliance with all regulatory requirements.
- Firms must be mindful of the distribution channels and techniques being used, particularly in relation to high risk products or products with complex features, to ensure that all marketing and advertising content is fair, clear and not misleading.
- Firms should have a documented escalation path in place that details the actions required in circumstances where deficiencies are identified in published marketing and advertising content.
- Information must be presented in a balanced manner in relation to risks and benefits, including in relation to required risk warnings, irrespective of the means of dissemination.
- The use of complex language, 'financial jargon' and/or abbreviations should be avoided. If any such language is included, a glossary should be available to investors providing a clear, 'plain english' explanation as to what is meant.
- Firms must ensure that all hyperlinks are functioning and bring the investor to the relevant information.
- Financial instruments must always be clearly labelled with the categories to which they belong, for example CFDs, Options or Future Contracts. In the case of derivative products, the labelling must be included in a manner that ensures it is clear to the investor that they are investing in a derivative product, and not the underlying asset of the product.
- Information pertaining to any restrictions that may apply referenced in social media posts must be readily and easily accessible to investors through, for example, a linked, dedicated landing page on the Firm's website.
- Where relevant, Firms must demonstrate compliance with the Central Bank's CFD Intervention Measure at all times.
- Where using Instagram to share content, Firms should not 'link' posts to 'Stories' in circumstances where further information pertaining to that post is contained within the 'link'. Firms must make use of alternative Instagram features, whereby the 'linked' content is always readily and easily accessible.
- Firms must ensure that all content included in a post is related to that post, unrelated content should not be included in an attempt to influence investor behaviour.
- Firms must ensure that marketing and advertising content is not designed in such a way to create a sense of urgency to "act now" in an attempt to influence investor behaviour.
- In circumstances where there is a space or character limitation, for example banner ads or search engine optimisation/pay-per-click ads, Firms are expected,



when advertising products and/or services, to link a dedicated landing webpage to the ad where all pertinent information is readily and easily accessible.

## 5. Monitoring of Published Marketing & Advertising Content and Compliance Function Review

**Overview:** Article 21(5) of the MIFID II Delegated Regulation sets out that Firms are required to monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with Article 21, and take appropriate measures to address any deficiencies.

**Findings:** The Central Bank observed weaknesses in some Compliance functions' review and monitoring practices in respect of marketing and advertising content, which include:

- Some Firms do not employ the use of a 'Lines of Defence' model (i.e. 4-eye review/independent review) in respect of the Compliance function's review and approval of marketing and advertising content pre-publication, or the post publication review of published marketing and advertising content.
- Where some or all of the Marketing and Advertising function is outsourced, half of the Firms included in the review reported that the local Compliance function does not measure the effectiveness of any published content.
- The majority of Firms do not have a documented escalation path in place for deficiencies that may be identified during the post-publication review of published marketing and advertising content.
- In some Firms, the Compliance function was not involved in any way in the post-publication review/monitoring of published marketing and advertising content.
- The majority of Firms do not include the review and monitoring of published marketing and advertising content as part of the annual Compliance Monitoring Plan.
- The majority of Firms do not perform an end-to-end review of the effectiveness of the Marketing and Advertising process.

**Good Practices Identified:**

- The existence of a Compliance Mandate that defines the frequency (for example, annual, quarterly, ad hoc) of the Compliance function's post-publication review of different types of marketing and advertising content. This is in addition to conducting quarterly quality assurance reviews of online content.
- Some Firms adopt the use of the '4 eye review' with clear segregation of duties in the Compliance function in respect of pre-publication approval and post-publication review of marketing and advertising content, i.e. one compliance team member approves content prior to publication, while a different team member performs the post-publication review and monitoring of published content.
- Some firms adopt the use of an internal risk matrix to consider the impact of any identified deficiencies in published marketing and advertising content as part of the post-publication review.



<b>Central Expectations:</b>	<b>Bank</b>	<p>Firms are reminded that they are required to monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with Article (21) of the MiFID II Delegated Regulation, and take appropriate measures to address any deficiencies.</p> <ul style="list-style-type: none"><li>• The Central Bank expects Firms to carry out an end-to-end review of the Marketing and Advertising process on a regular basis. The frequency of review should be documented in Firms' policies and procedures and approved by Senior Management and the Board.</li><li>• Firms are required to ensure that adequate internal controls are in place through segregation of duties in respect of the pre-publication approval and post-publication review of Marketing and Advertising content.</li><li>• Firms should have a documented escalation path in place that details the actions required in circumstances where deficiencies are identified in published Marketing and Advertising content.</li></ul>
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<b>6. Identification of Target Audience</b>		
<b>Overview:</b>		<p>Under Regulation 3(23) of the Regulations, Firms are required to specify an identified target market of end clients within the relevant category of clients for each financial instrument and must ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.</p>
<b>Findings:</b>		<p>The Central Bank observed that there were considerable variances in Firms' approaches to defining the characteristics of the target audience for published marketing and advertising content.</p> <ul style="list-style-type: none"><li>• Some Firms do not have policies and procedures in place to ensure that the characteristics of their target audience is appropriately defined.</li><li>• Where some or all of the Marketing and Advertising function was outsourced:<ul style="list-style-type: none"><li>○ the identification of a target audience was at the discretion of the Marketing department; and</li><li>○ the majority of Firms did not measure the effectiveness of any published content, specifically whether or not the identified target audience was reached.</li></ul></li></ul>
<b>Good Identified:</b>	<b>Practices</b>	<ul style="list-style-type: none"><li>• Firms aligned the identification of the target audience for marketing and advertising content with the relevant target market identified as part of the product governance process.</li><li>• Firms clearly documented the characteristics of the client profile considered most suited to a Firms' product or service, as well as those clients least suited to each product or service.</li><li>• Firms select the appropriate distribution channel to ensure that marketing and advertising content reaches the intended target audience, for example, through restricting the geographical location of the audience; dictating the audience for paid social media posts; dedicated landing website pages with differing information depending on the client profile/type, i.e. execution only versus advisory clients.</li></ul>





**Central  
Expectations:**

**Bank**

It is noted that, in an online environment, Firms do not have absolute control over the end audience, as the end audience can include potential clients who may fall outside the defined target audience yet are still able to 'follow' Firms' accounts online or subscribe to newsletters etc. Firms are nevertheless reminded that they are expected to have an internal control environment of a sufficiently robust nature that ensures that any information that is disseminated to clients or potential clients is directed at an identified target audience, so that ultimately the Firm's distribution strategy is consistent with the identified target market.

- The Central Bank expects Firms to have defined and articulated the characteristics of the target audience for all marketing and advertising content, irrespective of the channel(s) of distribution adopted by the Firm.
- The definition or characteristics of the target audience should be clearly documented as part of the Firm's Marketing and Advertising policies and procedures, and approved by Senior Management and the Board. In the context of product specific content, this should be aligned to the target market as identified in line with product governance requirements.
- Firms should measure and record the effectiveness of their published content to ensure it is reaching the defined target audience.