

Central Bank Structured Retail Product Review

The Central Bank of Ireland (the “CBI”) has issued a “Dear CEO” letter dated 22nd April 2022 (the “Letter”) relating to structured retail products (“SRPs”). The Letter includes details of its findings following a series of reviews of the area and sets out its expectations and actions required by relevant firms in light of this. It also includes a detailed appendix including further granular detail of its findings and related expectations.

Background

The MiFID II regulatory reforms increased the obligations of relevant firms in a range of key areas including in particular their obligations regarding identifying the target market for specific products and for manufacturers to ensure that such products are designed to meet the requirements of such a sector. Meanwhile, the low interest rate environment of recent years has seen significant growth in the market for complex SRPs as retail investors sought higher yields than those available from more traditional capital-protected products used historically. The CBI conducted a series of targeted reviews of SRPs manufactured and distributed in Ireland in light of this evolving and increasingly complex market and has now issued the Letter documenting its findings, expectations and next steps.

Overview of Findings

The Letter notes that the CBI identified a range of poor practices and weaknesses in policies and procedures employed by relevant firms in relation to SRPs. Key examples included failure to adequately identify the target market, failure to ensure client comprehension of complex features of SRPs and inadequate warnings and disclosures across a range of areas and features.

CBI Expectations

The Letter clarifies that the CBI expects firms to act in the best interests of clients at all times. It emphasises the need for them to protect clients in particular when also acting as product manufacturer and distributor.

Proportionate assessment of the target market and confirmation as to the appropriateness of the product for this are key requirements as well as the inclusion of appropriate risk warnings and fair and balanced information pertaining to likely investor outcomes.

Actions Required

The Letter clarifies that all firms who manufacture, distribute, or otherwise offer SRPs must conduct a thorough review of related practices including (a) presenting the Letter as a formal board agenda item for review and discussion; (b) undertaking a full review of relevant policies and procedures in light of the findings of the Letter; and (c) documenting the review and steps to be taken as a result, with a related action plan to be approved by the board by the end of Q3 2022. The CBI also notes that the findings set out in the Letter are not exhaustive and accordingly relevant firms should continue to refer to the underlying legislation, industry guidance (including the generic expectations set out in the Letter) and relevant underlying principles, such as client best interests, to ensure they are complying with related best practice.

How Clerkin Lynch Can help

The financial services team at Clerkin Lynch can assist relevant firms to ensure compliance with the requirements of the Letter, including the preparation of a related action plan to address this and updating related policies and procedures. The firm can also assist other interested parties for whom this may be of relevance, including with regard to due diligence and compliance steps.



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