

Costs and Charges under MiFID II

Costs and charges have become a key focus of regulatory scrutiny in Europe. The latest reflection of this is the announcement by the European Securities and Markets Authority (“ESMA”), the pan-European financial super regulator, that it has launched a common supervisory action (“CSA”) with local regulators, the national competent authorities (“NCAs”), across the European Union (“EU”), which will focus on the disclosure rules applicable to costs and charges under MiFID II.

This action, which is to be carried out during 2022, will facilitate both ESMA and the NCAs to assess the extent and appropriateness of the application by regulated firms of the related requirements on costs and charges under MiFID II. It can be noted that ESMA has already published some related guidance on this subject through its “Questions & Answers” materials, available on its website, so this will be of assistance to entities wishing to review their practices ahead of the CSA.

Key Focus

One of the key drivers of this initiative is investor protection across the EU and accordingly the treatment of retail clients and the information provided to them will be a key focus of the CSA. The CSA will explore compliance with the existing legislative regime and assess how firms address the requirements to ensure that disclosures are:

(a) fair, clear, and not misleading; (b) based on accurate data reflecting all costs and charges; (d) adequately disclose inducements; and (e) are provided in a timely manner.

Central Bank Activity

The Central Bank of Ireland (the “Central Bank”) announced this CSA in its Markets Update briefing earlier this year and as a relevant NCA in a Member State of the EU it will be fully participating in this action. This will initially involve gathering related market information but subsequent to this, and as noted further below, additional steps are likely to follow on foot of this.

Separately, the Central Bank has recently issued a “Dear CEO” letter on Structured Retail Products which is also of relevance for MiFID firms. See our related Legal Update for more information.

Accordingly, the issuance of a similar “Dear CEO” letter addressing the cost related issues which are the subject of this CSA is likely in due course.

Other Actions on Cost

Costs have become a key focus of regulators across a variety of sectors. For example, ESMA announced it was launching a CSA in 2021 to assess the compliance of supervised entities with the cost-related provisions in the UCITS framework and in particular the obligation to ensure funds were not paying undue charges. This remains ongoing. See our detailed article on this topic entitled “Regulatory Focus on Fund Charges” available on our website for more information.

How Clerkin Lynch Can help

The financial services team at Clerkin Lynch can assist relevant firms to ensure compliance with the requirements of the underlying MiFID legislation to ensure that they will be best placed if subjected to a review as part of the CSA by a NCA, including the Central Bank, and any directions that are likely to be issued following this. Relevant actions may include the preparation of a focussed action plan to assess existing compliance, ensuring any deficiencies meeting the requirements are addressed and updating related policies and procedures.



Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400



Ben Lynch