



1 December 2023

Re: Common Supervisory Action on MiFID II Costs and Charges Requirements

Dear Chief Executive Officer

The Central Bank of Ireland (Central Bank) recently conducted a thematic review which examined Firms' application of the Costs and Charges disclosure requirements as set out in the European Union (Markets in Financial Instruments) Regulations 2017¹ and Commission Delegated Regulation (EU) 2017/565 (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 Costs and Charges disclosure requirements.

The Central Bank considers the CSA on Costs and Charges to be an integral piece of work in both addressing and seeking to mitigate key investor protection risks in the investment sector. When availing of the services of firms providing MiFID II services, investors need to know what they are paying for and how much it is costing them. The provision of this information in a transparent and non-complex manner is important at all times, but especially so in an environment of increased costs and changing economic and financial market circumstances^{2 3}.

This is therefore an area where firms need to pay particular attention at this time, adopting an approach that places their clients' best interests at heart, as any inadequacies in the disclosure of costs and charges could adversely impact client outcomes. Transparent disclosure of costs and charges enable investors to make informed decisions, and in turn promotes investors' trust in financial markets.

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 Costs and Charges disclosure requirements and guidance⁴ 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

¹S.I. No. 375 of 2017 i.e. the Regulations transposing the Markets in Financial Instruments Directive (MiFID II) 2014/65/EU into Irish law.

² https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/consumer-protection-outlook-report/consumer-protection-outlook-report-2023.pdf?sfvrsn=db2d991d_4

³ https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/consumer-protection-outlook-report/dear-ceo-letter-protecting-consumers-changing-economic-landscape.pdf?sfvrsn=8d069b1d_5

⁴This includes relevant Level 1, 2 and 3 requirements and guidance in the [ESMA Q&As on Investor Protection Topics](#).



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 in Ireland that provide investment services to 88% 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 ESMA's public statement⁵, incorporate findings from the reviews conducted by NCAs across the EEA, and set out a number of shortcomings and areas where improvements are required. These findings are consistent with the findings of the Central Bank, and the ESMA public statement should be read in conjunction with this letter.

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

Costs and Charges Findings

The [ESMA Costs and Charges public statement](#) noted a number of key investor protection weaknesses. The core findings arising from the CSA on Costs and Charges related to:

1. *Aggregated Disclosure Statement*

The review noted limited adoption by Firms of the ESMA format (set out in Q&A 9.13) for disclosure of aggregated costs, leading to inconsistent and divergent approaches to disclosure. Furthermore, the review noted inconsistencies regarding the disclosure of implicit costs and the requirement to disclose aggregated costs and charges both numerically and as a percentage.

2. *Itemised Breakdown*

The review identified a general lack of detail and granularity in itemised breakdowns, limited uptake of the format and headings set out in Annex II of the Delegated Regulation (Annex II), and inconsistent use of MiFID II terminology, where Firms instead applied more bespoke or commercial terminology. Furthermore, notifications to advise clients of their right to request the itemised breakdown were not prominently highlighted.

3. *Third Parties and Third Party Payments*

In certain cases, the review identified that the responsibility for issuing costs and charges disclosures was outsourced to Third Party providers, with no oversight or monitoring of these

⁵ [Costs and Charges Public Statement](#).



disclosures by Firms. It was also noted that some Firms were overly-reliant on the ex-ante disclosure and did not separately itemise the third party payment received.

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

Action Required:

It is the Board's ultimate 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 and Credit Institutions providing MiFID II services to:

1. Review their Costs and Charges practices against the ESMA public statement 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 public statement and this letter. This review should be completed and an action plan discussed and approved by the Board of each Firm **by 31 March 2024**, 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 public statement and 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 limited self-initiated improvements made to investor protection frameworks across the investment sector, with significant enhancements to frameworks primarily made following identification of concerns by the Central Bank, and on foot of related Risk Mitigation Programmes. The Central Bank is of the view that this is indicative of a lack of embeddedness of an appropriate risk and compliance and consumer centric culture within Firms.

The Central Bank expects Firms to adopt a more proactive approach to the continuous evaluation of the effectiveness of all of its arrangements and practices, including those relating to Costs and Charges disclosure requirements, to ensure that they are meeting the highest standards of investor protection and delivering fair outcomes that put their clients' interests to the fore.

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 public statement and the matters raised in this letter.



Should you have any queries regarding the content of this letter please contact mifidconductofbusiness@centralbank.ie

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Des Ritchie

Head of Division

Consumer Protection – Investment Firms, Intermediaries & Client Assets Division



Schedule 1 CSA on Costs and Charges – Findings and Expectations

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

1. Aggregated Costs	
Overview:	In its Q&A on MiFID II and MiFIR investor protection and intermediaries topics, Section 9 Information on costs and charges, ESMA has set out a format (Q&A 9.13) for the disclosure of aggregated costs, in order to ensure greater transparency in costs and charges disclosures, and enable clients to easily compare costs and charges applied by different providers. The Central Bank considers the presentation of costs and charges disclosures in a fair, clear and not misleading manner as being critical in ensuring transparency of Firm's costs for clients in accordance with Regulation 32(3) of the Regulations.
Findings:	<p>The Central Bank noted instances of:</p> <ul style="list-style-type: none">• Limited adoption by Firms of the ESMA format (set out in Q&A 9.13) for disclosure of aggregated costs. This lack of consistency poses a risk that charges may be unclear for clients, while the lack of standardisation between Firms may make it difficult to compare costs and charges between different providers.• The aggregated costs and charges displayed only as a cash amount, and not as a percentage of the client's investment, as required in Article 50(2) of the Delegated Regulation and Q&A 9.4 & 9.13.• Implicit costs excluded from the aggregate disclosure statements.• Where the calculation of implicit costs was not based on the PRIIPs methodology (paragraph 12-20 Annex 6 of the PRIIPs RTS), the alternative method used by the Firm to calculate implicit costs was not disclosed.• Some Firms were overly-reliant on the ex-ante disclosure for disclosure of costs and charges.
Good Practices Identified:	<p>The Central Bank identified some good practices, whereby some Firms:</p> <ul style="list-style-type: none">• Adopted the high-level format of Q&A 9.13 by aggregating by investment services, financial instruments and Third Party payments.• Included a 'Glossary' or 'User Guide' to accompany the disclosure statement that defines and describes in detail the costs and charges and what they represent.• Included a clear illustration of the cumulative impact of costs and charges on return, by displaying the gross and net returns as per Article 50(10) of the Delegated Regulation.• Conducted ongoing monitoring and oversight of costs and charges, for example, reviews of costs and charges detailed within the Firm's Compliance



Monitoring and Internal Audit Plans, and specific costs and charges representatives appointed or client-focussed forums established.

- Assessed costs and charges of individual products against a defined threshold in order to identify 'expensive' products, with products deemed to have inflated charges flagged for further review.

**Central Bank
Expectations:**

- The Central Bank encourages Firms to adopt the ESMA format (set out in Q&A 9.13) when disclosing aggregated costs, to ensure that ex-post cost and charges disclosures are presented in a fair, clear and not misleading manner, and to enable clients to easily compare costs and charges applied by different providers.
- Aggregated costs and charges must also be displayed as both a cash amount and as a percentage of the clients' investment, as per Article 50(2) of the Delegated Regulation.
- Firms are required to include implicit costs in the aggregated costs and charges disclosure statement, as set out in Q&A 9.12.
- Where the calculation of implicit costs is not based on the PRIIPs methodology (paragraph 12-20 Annex 6 of the PRIIPs RTS), the alternative method used to calculate implicit costs must be disclosed.
- Firms are required to meet their obligations with regard to ex-ante and ex-post costs and charges disclosures.



2. Itemised Breakdown

Overview: The itemised breakdown is an important disclosure that provides additional detail and granularity, should clients wish to obtain it, and can assist clients in making informed investment decisions, as per Q&A 9.33.

Findings:

- While the Central Bank observed that Firms are generally notifying clients of their right to request an itemised breakdown of costs and charges as per Q&A 9.13, it was noted that in some instances these notifications were not prominently highlighted, for example, they were located at the back of a document or with a terms of reference document. This creates a risk that clients are not being clearly made aware of their option to obtain all available information on costs and charges.
- A lack of detail and granularity in itemised breakdowns was also noted, as well as limited uptake of the Annex II format and headings, and inconsistent use of MiFID II terminology where Firms instead applied more bespoke or commercial terminology. In some cases, Firms provided lengthy 'transaction statements' that provided significant detail on a per-transaction basis, but did not aggregate and itemise charges in line with the Annex II format or Central Bank expectations.
- Furthermore, implicit costs were not clearly disclosed in the annual disclosure statement, as set out in Q&A 9.12, for example, implicit costs were included in other categories, such as 'Transaction Fees'.

Good Practices Identified: The Central Bank identified some good practices, whereby some Firms:

- Included a clear and prominent notification within the aggregated breakdown of the client's option to request an itemised breakdown of costs and charges, in line with ESMA's best practice approach as set out in Q&A 9.13.
- Applied the Annex II format and headings in full.
- Included a 'Glossary' or 'User Guide' to accompany the disclosure statement that defines and describes in detail the costs and charges and what they represent.
- Adopted the use of a Costs Analysis tool, where clients can view all implicit charges applicable to their account, including 'explainers' and a definition of these charges.

Central Bank Expectations:

- Firms are required to ensure that clients are clearly notified of their right to request an itemised breakdown of costs and charges and that this notification is in a sufficiently prominent position as per Q&A 9.13.
- Firms must provide an itemised breakdown at least at the level of the cost items as set out in Annex II and Q&A 9.13.
- Firms are required to clearly disclose implicit costs in an itemised breakdown.



3. Third Parties and Third Party Payments

Overview:	Firms are required to issue costs and charges disclosures, as set out in Regulation 32(4) – (8) and Regulation 32(10) of the Regulations. This responsibility rests with the regulated Firm and cannot be outsourced to Third Party providers. Furthermore, the clear and explicit disclosure of any Third Party payments is a crucial element of transparent disclosure as per Regulation 32(7) of the Regulations, and clients should be fully aware of such payments, both on an ex-ante and ex-post basis.
Findings:	<p>The Central Bank observed instances whereby:</p> <ul style="list-style-type: none">• The responsibility for issuing costs and charges disclosures was outsourced to Third Party providers, with no oversight or monitoring of these disclosures by Firms.• Third Party payments were not effectively disclosed or itemised separately in the ex-post disclosure statement, as set out in Article 24(4)(c) of MiFID II, either as a sub-category of the service costs or as a separate row (Q&A 9.7 and 9.13). Third Party payments were not clearly labelled, i.e. Third Party payments should be clearly named as such, rather than using other terms that may not describe clearly and in simple terms the nature of such payments as per Q&A 9.25.
Good Practices Identified:	N/A
Central Bank Expectations:	<ul style="list-style-type: none">• Responsibility for issuing costs and charges disclosures rests with regulated Firms, as set out in Article 50(7) of the Delegated Regulation. This responsibility cannot be outsourced to Third Party providers. Firms are required to ensure that they maintain appropriately robust oversight and internal control mechanisms in respect of such processes.• Firms are reminded that they must disclose Third Party payments (inducements) in the ex-post itemised disclosure statement, ensuring compliance with Regulation 32(7) of the Regulations, either as a sub-category of the service costs or as a separate row (Q&A 9.7 and 9.13).• In line with Q&A 9.25, Firms are also required to ensure that Third Party payments are clearly named as such.