



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2015

Guidelines on Breach and Incident Reporting for MiFID Firms



General

1. These Guidelines apply to all investment firms authorised under S.I. No. 60 of 2007, the European Communities (Markets in Financial Instruments) Regulations 2007 (referred to below as “MiFID firms” or simply “firms”).
2. The Central Bank of Ireland (“the Bank”) views the reporting of breaches, potential future breaches and operational incidents as part of MiFID firms’ obligations under Section 1.2 of the Bank’s Supplementary Supervisory Requirements for Investment Firms under S.I. No. 60 of 2007, European Communities (Markets in Financial Instruments) Regulations 2007 (“Supplementary Supervisory Requirements”).
3. The Breach and Incident Reporting Form for MiFID Firms (“the Return”) is a return on the Bank’s Online Reporting System which was developed to facilitate breach and incident reporting by MiFID firms. The Return has two parts: Part 1¹ is a form on the Online Reporting System on which firms are required to provide information on the category of the issue being reported. Part 2² is a word document in which firms are required to provide more detailed information on the issue reported in Part 1 by answering specific questions. If the matter relates to Client Assets, a separate word document³ is completed.
4. Firms should notify the Bank as soon as they become aware of a breach, potential future breach or operational incident. Where necessary, firms should submit an updated Return after the initial Return is submitted, for instance where more relevant information becomes available on the background of how the issue occurred, its impact on the firm or the firm’s action plan to address the issue.
5. Firms should note that the Return is not a substitute for normal supervisory engagement. Firms should have regard to the urgency and significance of the matter and, if appropriate, contact their supervisor by telephone.
6. Firms should make their own assessment of the materiality of operational incidents. Firms are reminded however, of their obligation under Section 1.2 of the Bank’s Supplementary Supervisory Requirements to be open and co-operative in their dealings with the Bank.

¹ See Appendix A for outline.

² See Appendix B for outline.

³ See Appendix C for outline.

Client Assets

7. The Client Asset Regulations⁴ (“CA Regulations”) introduce a number of additional obligations to report matters to the Central Bank using the Online Reporting System. The Return should be used to report any such matters with a separate word document template completed in this regard.
8. For the avoidance of doubt, any issue identified during the course of a Client Asset Examination (“CAR Audit”) must be reported to the Bank on the Return, even if the issue was identified by the firm’s auditors or the Bank’s officers and was noted on a CAR audit report or in other written communication.

Reporting Requirements

9. The Return is set up on the Online Reporting System as an ad hoc return. Therefore when a firm wishes to report a breach, potential future breach or operational incident on the Return, the Return must first be scheduled by the firm. Guidance on how to schedule an ad hoc return is available on the Bank’s website:
<http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Pages/reporting.aspx>
10. The Return should be completed with reference to one particular issue / incident and therefore the matter being reported should fall under one of the four categories listed in Part 1: (A) Breach, (B) Potential future breach, (C) Operational incident or (D) Other Client Asset/ Investor Money Reporting Obligations. However, if appropriate, multiple categories may be selected in Part 1.
11. A blank template for Part 2 should be downloaded from the Bank’s website at the following link. It should be completed and uploaded as part of the Return on the Online Reporting System. Note: a separate template must be downloaded in relation any reportable matter that relates to Client Assets.
<http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Pages/forms.aspx>

⁴ S.I. No. 104 of 2015 effective from 1 October 2015

12. Guidance on how to complete the Return for each type of issue – (A) Breach, (B) Potential future breach, (C) Operational incident, and (D) Other Client Asset/ Investor Money Reporting Obligations – is provided below.
13. Where the Breach or Operational Incident is Client Asset related, firms need only complete the template at Appendix C in order to submit Part 2 of the Return.

A. Breach

14. When a firm is reporting a breach, it must populate “Yes” in row (A) on Part 1. In order to further categorise the breach, the firm must then populate “Yes” in the relevant row(s) in Sections 1 to 4 on Part 1 (i.e. rows 1.1 to 1.6, 2.1 to 2.9, 3.1 to 3.3 and 4.1 to 4.3).
15. Firms must then complete Section 1 of Appendix B. Section 1 of Appendix B requires firms to give comprehensive details about the breach. This includes reference to specific dates; background of the breach and its impact on the firm; how the breach was identified; whether it has been rectified; any actions taken or planned to resolve the issue; and any other changes made as a result of the breach.

B. Potential Future Breach

16. When a firm is reporting a potential future breach, it must populate “Yes” in row (B) on Part 1. The firm must then populate “Yes” in the relevant rows in Sections 1 to 4 on Part 1 (i.e. rows 1.1 to 1.6, 2.1 to 2.9, 3.1 to 3.3 and 4.1 to 4.3) to further categorise the potential future breach.
17. Firms must then complete Section 2 of Appendix B. Section 2 of Appendix B requires firms to give details about the potential future breach. It requests information including its probability; an estimate as to when the breach may occur; its estimated potential impact; and any mitigation or preventative actions taken or planned.
18. Examples where it would be appropriate for the firm to report a potential future breach are:
 - where it is likely that a firm will breach its capital requirements;

- where an IT, systems or other issue within, or external to, the firm is likely to cause the firm to breach a legislative requirement.

C. Operational Incident

19. When a firm is reporting an operational incident, it must populate “Yes” in row (C) of Part 1.
20. Firms must then complete Section 3 of Appendix B. Section 3 of Appendix B requires a significant amount of detail on the operational incident. It requires comprehensive details of the incident; relevant dates; its impact; how it was identified; whether the issue has been rectified or how the firm plans to rectify the issue; and any further changes that have occurred as a result.
21. Examples of operational incidents which the firm should report to the Bank include but are not limited to:
 - business disruption and system failures;
 - litigation;
 - disciplinary proceedings against the firm;
 - internal fraud;
 - external fraud;
 - incidents around client products and business practice;
 - damage to physical assets.

D. Other Client Asset/ Investor Money Reporting Obligations

22. When a firm is obliged to report any matter relating to Client Assets, which is not a breach, or operational incident, it must populate “Yes” in row (D) of Part 1. Examples of reportable matters under (D) include material reconciliation differences and material funding requirements. The firm should include as much information as possible in relation to any reportable matter.
23. For the avoidance of doubt, the template at Appendix C should be downloaded and completed for any Client Asset related reporting obligation (including breaches, potential future breaches and operational incidents). For Client Asset related matters, only Appendix C should be completed in order to submit Part 2 of the Return.

E. Further Information

24. Should a firm wish to detail any additional information pertaining to the breach, potential future breach or operational incident it should document this in Section 4 of Appendix B. Alternatively, a firm may upload a document or documents containing further information as part of the submission process on the Online Reporting System.

Appendix A

Part 1 – Form on the Online Reporting System

Reporting Date		
Institution		
<u>Breach and Incident</u>		
Breach and Incident Reporting Template for MiFID Firms - Part 1		
Please select the relevant category:		
(A)	Breach	
(B)	Potential Future Breach	
(C)	Operational Incident	
(D)	Other Client Assets/Investor Money Reporting Obligations	
If A or B is selected above, please choose the relevant category or categories for the breach/potential future breach		
Note: If the reportable matter relates to Client Assets/Investor Money, please complete the Client Asset/Investor Money Reporting Form (see Guidance Note)		
1	Client Asset/Investor Money Regulations relating to:	
1.1	Segregation	
1.2	Designation	
1.3	Reconciliation	
1.4	Daily Calculation	
1.5	Client Disclosure and Consent (Client Asset)	
1.6	Other provision of the Client Asset/Investor Money Regulations	
2	MiFID Breach relating to:	
2.1	Organisation requirements and compliance (MiFID Regulation 33)	
2.2	Further – business procedures, internal control mechanisms and reporting (MiFID Regulation 34)	
2.3	Further – monitoring and evaluating systems, control mechanisms (MiFID Regulation 35)	
2.4	Risk management function (MiFID Regulation 36)	
2.5	Internal audit function, supervisory function and senior management (MiFID Regulation 37)	
2.6	Outsourcing (MiFID Regulation 105)	
2.7	Scope of authorised activities and / or services	
2.8	Breach of condition imposed	
2.9	Other prudential MiFID breach	
3	Capital Requirements Directive Breach (where applicable)	
3.1	Breach of capital requirements	

3.2	Breach of large exposure requirement	
3.3	Other CRD breach	
4	General Breaches	
4.1	Breach of Anti-Money Laundering or Countering Terrorist Financing regulations	
4.2	Breach of Supplementary Supervisory Requirements	
4.3	Any other prudential breach	

Appendix B

Part 2 – To be Downloaded from the Central Bank Website

Breach, Error and Incident Reporting Form for MiFID Firms – Part 2

This form is Part 2 of the *Breach, Error and Incident Reporting Form for MiFID Firms*. Part 1 is available on the Online Reporting System. Both parts should be completed and submitted simultaneously on the Online Reporting System.

Section 1 - Breach

If (A) is selected in Part 1, please answer the questions in Section 1, otherwise skip to Section 2.

When did the breach occur? Please specify the relevant date(s) and the time interval over which the breach occurred.

Please provide comprehensive details of the breach.

What is the impact of the breach? Please provide an assessment of (i) the financial impact to the firm, customers and other relevant stakeholders, (ii) the reputational impact and (iii) any other impact.

On what date was the breach identified?
[dd/mm/yyyy]

How was the breach identified?

Has the breach been rectified?

[Yes / No / Not Applicable]

If yes, please explain how and when the breach was rectified.

If no, please detail the actions that are planned to rectify the breach. Include detail on the expected timeframe to complete these actions.

If not applicable, please explain why.

Please detail any further changes to the firm's systems, procedures or controls that have been made or are planned as a result of the identification of the breach.

Section 2 – Potential Future Breach

If (B) is selected in Part 1, please answer the questions in Section 2, otherwise skip to Section 3.

Please provide comprehensive detail on the potential future breach.

What is the probability of the potential future breach occurring?

When do you estimate the potential future breach might occur?

What is the estimated impact of the potential future breach? Please provide an estimate of (i) the financial impact to the firm, customers and other relevant stakeholders, (ii) the reputational impact and (iii) any other impact.

What actions have you taken or are planned in order to mitigate or prevent the potential future breach? Include detail on the expected timeframe to complete these actions.

Section 3 – Operational Incident

If (C) is selected in Part 1, please answer the questions in Section 3, otherwise skip to Section 4.

When did the material operational incident occur? Please specify the relevant date(s) and the time interval over which the incident occurred.

Please provide comprehensive details of the material operational incident.

What is the impact of the material operational incident? Please provide an assessment of (i) the financial impact to the firm, customers and other relevant stakeholders, (ii) the reputational impact and (iii) any other impact.

On what date was the incident identified?

[dd/mm/yyyy]

How was the incident identified?

Has the incident been rectified?

[Yes / No / Not Applicable]

If yes, please explain how and when the material operational incident was rectified.

If no, please detail the actions that are planned to rectify the material operational incident. Include detail on the expected timeframe to complete these actions.

If not applicable, please explain why.

Please detail any further changes to the firm's systems, procedures or controls that have been made or are planned as a result of the identification of the material operational incident.

Section 4 – Further Information

Please detail any additional information pertaining to this matter or upload in a separate document.

Appendix C

Part 2 – To be Downloaded from the Central Bank Website

Client Asset/ Investor Money Reporting Template	
Brief Description of Reportable Matter	<input type="text"/>
Client Assets/Investor Money Oversight Role (PCF 45/46) Name	<input type="text"/>
Has reportable matter been brought to the attention of board and/or Risk Committee?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	N/A <input type="checkbox"/>

Time Line

Date Reportable Matter Occurred	___/___/___	Possible Future Breach	<input type="checkbox"/>
Date Reportable Matter Recorded	___/___/___		
Date Reportable Matter Rectified	___/___/___	If Applicable	
Regulation (Please record the Regulation relating to the breach/incident or other reporting obligation)			
<input type="text"/>			

Impact

Value	Currency	<input type="text"/>	
	Nominal	<input type="text"/>	
Recurrent	Yes	<input type="checkbox"/>	
	No	<input type="checkbox"/>	
Material	Yes	<input type="checkbox"/>	N/A <input type="checkbox"/>
	No	<input type="checkbox"/>	
Please record the basis for which reportable matter is deemed material as per firm's Client Asset Management Plan (CAMP)/Investor Money Management Plan (IMMP).			
<input type="text"/>			
Detail of Impact/possible impact			
	Client	<input type="checkbox"/>	Firm <input type="checkbox"/>

Reputation <input type="checkbox"/> Other <input type="checkbox"/>
Please provide detail of impact with regard to the above area/s

History/Description of Reportable Matter

Please provide a detailed description of the reportable matter. Include all relevant history including details of all operational areas within the firm impacted by the reportable matter and how it was identified.
Please detail resolution status and/or resolution/ remediation plans.
Please confirm if there is potential for further occurrences and outline the likelihood in this regard. Please detail additional processes or procedures put in place to prevent re-occurrence if applicable.
Please detail any further information you deem applicable pertaining to this reportable matter, error or reporting incident.

Status of Reportable Matter

On-going <input type="checkbox"/> Closed <input type="checkbox"/>
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