



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

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23 November 2015

**Re: Themed Inspection: Contracts for Difference in MiFID authorised Investment and Stockbroking Firms  
European Communities Markets in Financial Instruments Regulations, 2007 (MiFID Regulations)  
Consumer Protection Code 2012 (Code)**

Dear CEO

The Consumer Protection Outlook Report, which we published in February, sets out our assessment of key existing and emerging risks to consumers and lists priority themes for the industry and the Central Bank. One of the priority themes identified is the sale of investment products, which can pose a significant threat to consumers. As part of our work in this area, the Central Bank has recently completed a themed inspection in relation to Contracts for Difference (CFDs).

The themed inspection assessed firms' product oversight and governance processes in relation to CFDs and specifically sought to assess how firms are delivering fair outcomes for consumers.

The Central Bank has concluded that CFDs are not suitable for investors who have a low risk appetite due to the volatile nature of the CFD market, coupled with the potential for the consumer to lose more than the initial investment.

The purpose of this letter is to provide feedback in relation to the areas of concern identified by the Central Bank following the themed inspection.

**Process**

The themed inspection consisted of a desk-based review of all active Investment and Stockbroking firms, providing CFD products (including spread betting), which are authorised by the Central Bank or operating in Ireland on a branch basis (nine firms). The desk-based review was followed up by on-site inspections in four of these firms.



## **Findings**

The themed inspection covered retail clients who invested in CFDs during 2013 and 2014. Over 39,000 retail clients, of which almost 5,000 were Irish resident, invested in CFDs with Irish based investment and stockbroking firms during the period. It was noted that 75% of clients made a loss, of which the average loss was €6,900.

- **Assessment of Appropriateness:** MiFID Regulations 76 and 94 prescribe the assessment of appropriateness requirements for investment firms, specifically that firms must carry out an ‘appropriateness’ assessment of all clients to ascertain the clients’ knowledge and experience in order to determine if the product / service is appropriate for the client. If a client does not have sufficient knowledge and experience, the firm is required to inform the client of the risks prior to opening the account and provide specific warnings that the product may not be suitable. The inspection identified that the criteria used for assessing appropriateness varied among the firms reviewed. The criteria used by some firms went above the requirements, however, improvements are needed in other firms, where the Central Bank has determined that the process used by these firms may have overestimated their clients’ knowledge and experience.

Firms are now required to review their current appropriateness assessment to ensure that the information / assessment conducted in relation to a client’s suitability / appropriateness is reflective of the client’s prior knowledge and experience. In the event that the client’s prior knowledge and experience is not considered to be sufficient, firms must ensure that appropriate risk warnings are in place. Educational or training material offered by a firm cannot be the only barometer for assessing a client’s knowledge and experience.

- **Complaints Process:** MiFID Regulation 38(1)(a)(b) prescribes the requirements for investment firms in relation to complaints, requiring firms to maintain effective and transparent procedures and to keep a record of each complaint and the measures taken for the resolution of the complaint.

In addition, firms are also expected to comply with the Provision 10 of the Code in relation to the complaints handling process.

Most firms were found to be in compliance with regulatory requirements, but some firms have not incorporated all of the requirements of the Code, such as failure to maintain up-to-date and comprehensive records, and failing to provide the consumer with regular updates on the status of their complaints.

Firms are reminded of the requirements of the MiFID Regulations and the Code in relation to the complaints handling process, and should review current process and procedures to ensure they are in compliance.

- **Marketing Material:** MiFID Regulation 80(1) (2) provides that investment firms must ensure that all marketing material is sufficiently balanced and does not disguise, diminish or obscure important information, statements or warnings for a consumer.



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Marketing material was not always constructed and presented in a sufficiently balanced way to outline both the risks and benefits associated with CFDs. Furthermore, risk warnings were not always sufficiently prominent as required under the MiFID Regulations.

Firms should review the requirements in relation to all current and future marketing material.

### **Next Steps**

All firms are now required to immediately review their systems and controls in light of the issues identified and to enhance their compliance processes where necessary. Firms must take all remedial action necessary to ensure that they are in compliance with the requirements of the MiFID Regulations and the Code, thus ensuring that they are acting in the best interest of consumers.

Additionally, the Central Bank is engaging directly with those firms, where issues have arisen, and is considering the appropriate use of its supervisory powers to address the issues identified.

The Central Bank will have regard to the contents of this letter, or any other guidance issued by the Central Bank in relation to the application of the MiFID Regulations and the Code in assessing firms' future compliance with the provisions of the MiFID Regulations and the Code.

Should you have any queries in relation to the contents of this letter, please contact Ms Rosaleen Griffin or Mr Brian O'Kelly at [mifidconductofbusiness@centralbank.ie](mailto:mifidconductofbusiness@centralbank.ie)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Helena Mitchell'.

**Helena Mitchell**  
**Head of Consumer Protection: Supervision Division**