



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Consumer Protection Code Review

Irish MiFID Industry Association
Response

Response Information

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Irish MiFID Industry Association

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Broad Theme A – Availability and Choice

Q.1 What are your views on availability and choice of financial services and products for consumers?

It is noted that in a European context, Ireland has a relatively small domestic market for retail financial services, notwithstanding the scale of the Irish Funds industry, which has been enormously successful in the exportation and passporting of retail financial services products, predominantly UCITS funds, UCITS ETFs and AIFs to overseas markets. Many MiFID incumbents and entrants to the Irish market are focused on wholesale, captive or export services. This has led to a very palpable lack of competition, innovation or modernisation within the MiFID-retail intermediary space in Ireland compared to other jurisdictions. This is observed in the lack of MiFID based investment platforms or scalable discretionary managed model portfolios operating in Ireland compared to overseas markets.

For retail investors, quite often choice and availability is limited to investments made via regulated intermediaries who are IDR distributors of life-wrapped investments and life-wrapped pre-and post-retirement pension products. The Life industry in Ireland is dominant in retail distribution channels vs. MiFID based alternatives, notwithstanding access to investment instruments such as UCITS funds and UCITS ETFs will typically be less expensive and with broader choice when accessed directly and not life-wrapped, which increases the cost of access (due to embedded and amortised indemnified commission arrangements, and also life insurance levies). Quite often, the cost to exit or switch providers will also be larger (via clawbacks, exit penalties and other punitive mechanisms embedded in these products which have the effect of changing the characteristics of liquid retail products capable of being purchased or sold within short time frames and without cost, such as UCITS funds, into term based life wrapped investments with material entry and exit costs.

In Irish distribution channels, MiFID portfolio management services and MiFID advisory services designed for retail clients are particularly difficult to place into 'Distribution Channels' with retail intermediaries, and therefore MiFID firms tend to service a direct client base, and do not have adequate penetration into retail distribution markets.

It should also be noted that punitive tax treatment on investments negatively effects consumer access and choice. The standard rate of Capital Gains Tax (CGT) is 33%, but of much more concern is the operation of Exit Tax on collective investment funds (UCITs and ETFs), which is operated at the marginal rate of tax (currently 41%), and there is also an 8 year 41% deemed disposal tax on UCITS Funds and certain Exchange Traded Funds (ETFs). Any losses made cannot be offset against gains made on different instruments, which has the effect of turning capital investments into more of an income-like investment model. Furthermore, direct investment in collective investment funds subject to self-assessment taxes requires retail investors to become mandatory e-filers with Revenue. Whilst we note that taxation policy is not within the remit of the Central Bank, we do note that taxation policy creates material blockages for domestic retail investors to invest in UCITs and UCITs ETFs, which can be materially more beneficial from a cost and availability perspective for retail investors in Ireland, than life wrapped alternatives. Where blockages exist to allow retail investors' capital to flow into

cost and availability perspective for retail investors in Ireland, than life wrapped alternatives. Where blockages exist to allow retail investors' capital to flow into UCITs and UCITs ETFs, we recommend these be examined across the various stakeholders in the Irish policy system with a consumer protection lens.

For example, deemed disposal discourages ordinary consumers from making responsible, relatively safe and long term investment decisions. It nullifies compounding interest and forces consumers to make investment decisions based on the tax regime as opposed to the best choice. The other argument for deemed disposal is to prevent income tax from rolling up indefinitely. Indefinite roll-ups don't happen in practice; most consumers invest to eventually sell their securities, whether that is after 5 years or 20 years.

The Central Bank has an important voice if it is to promote choice and availability and for example, the domestic consumption of UCITS and UCITS ETFs as transparent, cost effective and highly regulate investments with a high level of consumer protection. We recommend that conversations around availability and choice for consumers for investment products should also consider a re-examination of the tax regimes embedded in the consumption of these products domestically.

Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

New providers and existing providers using existing or new delivery channels should be encouraged to enter the market to create more competition and choice for consumers. There has been a net reduction in authorised MiFID firms particularly with new or novel business models due to perceived and anecdotally reported regulatory bottlenecks in the authorisation processes.

Consumers needs continue to change and evolve and this can be seen in the popularity and convenience of An Post, Revolut and other financial services providers in the Banking and Payments Sector, often favoured by consumers due to their stance on specific reach and products for targeted demographics.

The largest investment firms in Ireland continue to be traditional firms offering traditional services. We strongly believe that the Central Bank projects very much a "Gatekeeper" positioning in relation to it's approach to authorisations, which discourages "new and novel" firms and business models.

Whilst the need for financial stability in the Regulatory system is understood, we believe lack of new entrants is a material threat in the industry. Lack of new ideas and approaches in the market from new entrants results in a small number of firms servicing retail clients, which in all markets, not just financial services, reduces innovation.

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

The Central Bank should encourage competition to improve availability and choice for consumers. The Central Bank should in particular, encourage competition by examining blockages to retail investment and capital market flows which exist today, and alongside other stakeholders, such as the Pension Authority, Revenue,

Dept of Finance, Industry Bodies and Advocacy Bodies, examine if consumer protection may be enhanced by targeted and specific removal of known and emerging blockages to retail investor flows into capital markets. We note and welcome upcoming engagement on Capital Markets Union initiatives which we hope will advance this agenda for a number of State Bodies and Industry Groups.

The Consumer Protection Code plays an important part in the consolidation of behaviour in intermediated markets. As it stands currently, within the Consumer Protection Code, the perception of MiFID distribution channels being more onerous than under IDR distribution creates competitive distortions, reduces competition, reduces perceived choice in intermediated markets, and prevents access for retail investors to benchmark the value provided by providers and understand the roles and value ascribed to each provider providing services to them. We believe the Central Bank should make a material effort to ensure MiFID distribution channels are not made to appear more complex or technical than they are. Currently, the Consumer Protection Code Chapter 14, which deals mainly with MiFID services is overly technical, and more effort could be put into it to ensure to ensure industry practitioners can use it effectively.

Broad Theme B – Firms Acting in Consumers’ Best Interests

Q.4 Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

Agreed. IMIA member firms would welcome additional guidance on acting in the best interests of consumers from the Central Bank. The Central Bank could clearly articulate its’ expectations in this regard as this is open to generous interpretation and would vary significantly for different businesses and offerings.

However, there is concern from IMIA members that a lack of clarity over the relevant source of guidance may arise from two different streams of binding requirements: MiFIDII/ESMA and the Consumer Protection Code.

The revised Consumer Protection Code should be a live and a digital conduct of business (COB) rulebook which is updated regularly to ensure that both historic and new communications from the Central Bank (Industry letters, Dear CEO’s etc) are kept in one, easily accessible reference source and are contemporaneous. We see this approach being effectively used in other jurisdictions where COB Rulebooks are available digitally.

From a passporting perspective, it must also be clear to inward passporting firms that there are specific local conduct of business rules which are binding, and the availability of these in a single COB rulebook would be beneficial to prevent competitive distortions resulting from inward passporting due to lack of availability or accessibility of local COB rulebook.

Q.5 Does the suggested outline of ‘customer best interest’ guidance capture the essence of the obligation to act in customers’ best interests? What other guidance would you suggest?

No

“Acting in the customer’s best interest” is something that all Member Firms strive to do. Outside of a discretionary mandate, a difficulty can arise when a consumer wishes to act against their own interests. This is most prevalent for execution-only services which are a material part of many MiFID firms’ business models. Execution-only means that retail investors give the firm instructions to transact in financial instruments without any suitability and often appropriateness assessments taking place, and without investment advice. If a customer opts for execution-only services, they must acknowledge that they understand that they will not receive any advice and will not benefit from the requirement to perform suitability and appropriateness assessments. It must be remembered also that even when consumers are in an Advisory relationship with firms, the consumer can choose to ignore the advice and proceed with a trade or strategy that may not be in their best interests. Guidance in relation to how best to deal with clients who proceed and instruct on investments contrary to a firms advice, and also guidance on potential vulnerable clients who avail of execution only and Advisory services would be welcomed.

Any guidance on Customer Best interest should include qualifying language that depending on the business relationship between the firm and the investor, may limit the firm’s ability to protect a client and act in their best interests (for example, under an execution only mandate), to ensure that firms can manage competing regulatory requirements, such as best execution obligations.

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Not Sure

The IMIA welcomes any steps to improve the efficiency of the authorisation process, as we believe Innovation requires an active market which includes new entrants.

The authorisation process can be expensive and lengthy which may deter innovation. Having a “regulatory sandbox” as opposed to an Innovation Hub, or in conjunction with an Innovation Hub to give new entrants the opportunity to demonstrate that their business is viable and meets regulatory requirements would be a welcome development.

The Innovation Hub is currently predominantly aimed at Fintech Firms. It would be useful if its remit was expanded to all firms that intend to operate new business models, noting that sometimes innovation may come from service and business model innovations which require sandboxing, and not just technology.

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

Failing to embrace innovation and creating regulatory obstacles will deter new entrants and reduce choice for consumers. We believe that “advice as a service” is not properly addressed in the Consumer Protection Code, and also in the Minimum Competency Requirements. The CPC predominantly focuses on product-based sales, i.e. it assumes that each piece of advice provided by a retail intermediary will be linked to a product sale which is provided by a Product Producer. This is a gross simplification and not in keeping with material developments in financial advice models, both internationally and domestically.

For example – many retail investors now benefit from advice which is based around cashflow planning, typically provided by Certified Financial Planners. Valuable advice models which often have very beneficial outcomes for investors are currently not a feature in the Consumer Protection Code, and we believe they should be featured and promoted more heavily. Cashflow planning often cuts across numerous product types (both human capital needs (typically insured needs), and financial capital needs (typically investment, savings and deposit needs). These advices often result in multiple advices to clients across multiple product providers, and this level of holistic advice is grossly simplified in the CPC to being ‘one advice – one product’ which is not in keeping with how advice is often delivered.

We would also suggest that the Central Bank examines the Minimum Competency Requirements, to allow for differentiation between types of advisors, so consumers can understand better whether they are being advised by a QFA, Certified Financial Planner or independent advisor.

It is important the Central Bank also recognises innovations and advancements in advice and advice delivery, such as algorithmic (robo) advice models, which may become a delivery mechanism of scale.

Q.8 How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

Many members and new entrants have confirmed to the IMIA that they believe it is not at all clear on what basis the Consumer Protection Code applies to firms that are passporting in or operating on a tied agency basis from overseas firms - which means that domestic firms are being held to a higher regulatory standard than firms passporting in. This is also true of “Dear CEO” letters and other regulatory guidance documents that are aimed only at domestically regulated firms.

Passported firms should be subject to the Conduct of business rules of the host state to ensure a level playing field and ensure fair competition. In this regard, a single COB rulebook which is accessible and digitally available should be highlighted to any firms operating on passporting in basis or via Tied Agents or Branches in the State.

Theme 2 – Digitalisation

Q.9 Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services?

What are the key issues for you?

The IMIA is in broad agreement with the assessment of digitalisation in financial services. MiFID firms that service retail clients (with the exception of firms providing execution only services) must conduct suitability assessments before onboarding a customer. In this way MiFID services provide a significant layer of protection to ensure that consumers do not purchase products which may be unsuitable for their needs. MiFID firms have also demonstrated their ability to use technology to comply with complex AML requirements, and it is noted that digitalisation of reporting was already introduced via the MiFID 'Quick Fix' Directive in 2022.

Q.10 How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

Theme 3 – Unregulated Activities

Q.11 The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

Not Sure

Many consumers will not be aware, or be only marginally aware of the Central Bank's role in Financial Regulation. It would be useful if the statement included a basic explanation of regulated vs non-regulated activities including the benefits and disadvantages of both, and what protections may be lost where non-regulated products or services are provided by Regulated Services Providers.

It is noted also that many Pension Products in Ireland are not regulated by the Central Bank of Ireland, but by the Pensions Authority, notwithstanding that Regulated firms often provide the underlying services within products authorised and regulated by the Pensions Authority, subject to regulatory rules supervised by the Central Bank. We believe the role of the two regulators is poorly understood by Consumers.

Given pensions are the most utilised savings method outside of Bank Deposits, we believe the CPC should encompass all retail investment channels, including pension products not regulated by the Central Bank, and this would create material benefits to both consumers and Industry Practitioners and regulated entities and would help in the prevention of regulatory divergence issues arising. For example, it is currently not possible for regulated intermediaries to provide 'independent' investment advice within PRSAs due to remuneration rules with PRSAs which don't recognise independent investment advice provisions under MiFID II.

Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

The main point that consumers must understand is that purchasing unregulated products does not afford them the protections (under COB rules, ICCL and via the Financial Services and Pensions Ombudsman) that purchasing regulated products does. We believe the Central Bank should take steps to enhance consumer education, in order that consumers better understand the relative benefits of regulated products and services and to aid consumers in understanding that Pensions regulation (and also ARFs) can differ from regulatory protections via the Central Bank.

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

Not Sure

Firms undertaking unregulated activities for retail consumers should ensure that the consumer understands and accepts the risk of unregulated activities.

Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

An Illustration (or model illustration) of ex-post and ex-ante for retail distributors would be useful within the Consumer Protection Code. Currently the CPC does not provide model illustrations for these, and we believe model illustrations would benefit both consumers and industry practitioners greatly. TISA in the UK produced Model Illustrations which were adopted and used extensively, and we believe a similar approach should be taken in Ireland and embedded in the CPC.

We also form the view that the transparency requirements within MiFID II create a much higher and more beneficial level of transparency than in IDR distribution, and consumers benefit from this. Transparency requirements, particularly around remuneration aspects should be provided to ensure a level playing field between IDR and MiFID distribution, while ensuring that requirements are consistent with current MiFID obligations.

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

Theme 5 – Informing Effectively

Q.16 How can regulation improve effectiveness of information disclosure to consumers?

Firms should be able to rely on customers having read the regulatory disclosures and product/service information with which they have been provided - for example, the TOBs, CAKID, marketing material etc. The onus is still on the firm to ensure the client has both received and understood these documents. This is

particularly important in the case of advisory/discretionary clients. The inclusion of the regulatory disclosure that a firm is authorised by the Central Bank of Ireland provides comfort to clients in knowing that the firm they are obtaining services from is regulated by the Central Bank and as such, there is a level of investor protection.

Regulation requires that certain information is provided to clients in a timely fashion and ensures that they have certain material prior to making an investment decision, which only strengthens their knowledge and also protects the firm. CPC states that all material, including information disclosures must be fair, clear and not misleading and so this provision ensures the language used is in its simplest form, once adopted by firms.

However, where retail customers access MiFID services through intermediaries it would be helpful to ensure consistency of application of disclosures via retail intermediaries. In the case of conducting an appropriateness test, there are instances where the intermediary conducts tests of a consumer's knowledge, skills and experience (i.e. an appropriateness assessment) and yet a MIFID firm may still be required to conduct either their own appropriateness test, or a reassessment of suitability depending on the service/regulation.

It should be possible for a retail intermediary (an investment business firm) to be relied on by an Investment Firm wholly and for both suitability and appropriateness recommendations, given the analogous requirements to assess both suitability and appropriateness tests in the CPC as with MiFID.

Q.17 How can firms better support consumers' understanding – can technology play a role?

Q.18 Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products, and borrowers' different circumstances and needs.

Theme 6 – Vulnerability

Q.19 Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

There can be difficulties around labelling vulnerable consumers. Some member firms have expressed concerns that consumers may not be amenable to being labelled as vulnerable. See also criticism by the Workplace Relations Commission, in their 5 July 2022 decision against PTSB.

MiFID firms typically deal clients with consumers who are in late stage capital accumulation (e.g. lump sum savings and accumulated wealth), and early stage decumulation (post retirement clients), and an older client base via ARF products, given the bell-curve of wealth and savings in the State. As noted in the earlier section, members would appreciate guidance on how to deal with potentially vulnerable consumers when providing MIFID services, and particularly in execution-only mandates.

Any guidance on Vulnerability should include qualifying language that depending on business relationship between the firm and the consumer which may limit the firm's ability to protect the consumer and act in their best interests (for example, under an execution only mandate), to ensure that firms can manage competing regulatory requirements, such as best execution obligations.

Any guidance on Vulnerability should include appropriate disclosures which highlight that certain products and services are not subject to suitability and appropriateness assessments which are designed to protect the interests of the client.

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

Members believe that vulnerability needs to be balanced with the individual's right to have access to MIFID services. Firms would like clear guidance when providing services to potentially vulnerable consumers. This is particularly relevant when dealing with execution only clients investing in non-complex products where there will be no obligation to undertake an appropriateness assessment.

Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

Our understanding is that the Consumer Protection Code is aimed at the Financial Services Industry, not for providing information to consumers. Notwithstanding this, we believe the codification of some elements of advice and disclosures will be provided via CPC. The issue of Financial Education is a separate but important issue, and we retain the belief that most financial education will come through advice. We believe advice is the most important and effective delivery mechanism of financial education.

The Competition and Consumer Protection Commission is responsible for consumer education. Whilst the Central Bank does not have a consumer education mandate, it has an important and authoritative voice to provide guidance to consumers.

At present, there is very little information on MiFID services on any of the responsible authorities' websites for consumers, and we believe the material enhancement of consumer protections and transparency available via MiFID services should be highlighted.

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

Ideally, consumers should be empowered at an early age to be financially savvy. Education around personal finances should be a lifelong commitment, but for many

it is not possible. Consumers can protect their own interests by seeking independent financial advice at regular intervals in their life. We believe that advice remains the best mechanism for consumer education.

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

The financial system plays an important role in supporting the transition to a climate neutral economy. In particular, the financial system may be used to incentivise consumers to purchase ESG products. Since the MiFID II amendments on Sustainability preferences came into force in August of 2022, IMIA member firms have not seen much interest or demand for sustainable products from customers. Increasing awareness of Sustainable Investment and incentivising investment through ESG (e.g. through tax incentives) is the best approach the financial system can take.

ESG products are relatively new and there is still a great deal of confusion and jargon. As it becomes more mature, it will become easier to regulate. During the transition, the Central Bank must be flexible and accept a best efforts approach from Firms.

The Central Bank should also recognise, when exercising supervision in this area, the difficulties firms face in obtaining reliable and comprehensive ESG data for their investments.

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

For portfolio managers and investment advisers, there is a potential conflict between fiduciary duty to obtain the best investment returns for investors, and mitigating against climate change. It should be noted that many consumers prioritise investment returns over ESG factors, and in the past 12 months, some of the strongest investment returns have come from the fossil fuel industry.

MiFID Investment firms are obliged to ask clients about their sustainability preferences, and act on those preferences, if any. Firms are also obliged to publish information on the incorporation of sustainability risks in their investment process.

This level of enquiry and disclosure provides a sufficient level of protection for consumers, and we suggest that this approach be a model for the revised consumer protection code, without any additional enhancement.

Q.25 Does the impact of climate change require additional specific consumer protections?

Yes

As stated in Question 24, there are sufficient protections in place. However, going back to theme 7, consumers should have basic literacy when it comes to sustainable finance disclosures and the role that finance can play in supporting the transition to a climate neutral economy. Responsible authorities should ensure that consumers have access to easy to understand information on Sustainable Finance.



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