

LEAP Conference – October 24 2017



Regulation Update for Leading Edge Advisors - 2018

Ronan Gahan

MBA, MSc, HDip, LIB, FCOI, LCOI, PTP, CDPO, CFCPP, QFA, APA

Managing Director – Risk and Compliance

Agenda

- Steer clear of regulatory jargon (where possible – it's difficult!)
- Provide concrete positions where possible (some still in the mixer)
- Make this presentation tailored to Leading Edge Advisors
- Slides are **wordy** for **future reference**, but will simplify in narrative
- Mainly addressing:
 - Dept. of Finance Feedback Statement on National Discretions in MiFID 2
 - 14 July 2017
 - EU Commission Delegated Regulation 2017/565
 - 25 April 2016
 - Irish Statutory Instrument No 375 of 2017 (MiFID 2 Regulations)
 - 10 August 2017
 - Addendum to the Consumer Protection Code
 - 22 August 2017
 - MiFID Suitability Themed Review Dear CEO Letter
 - 29 August 2017



DoF.pdf



2017-565.pdf



SI-375.pdf



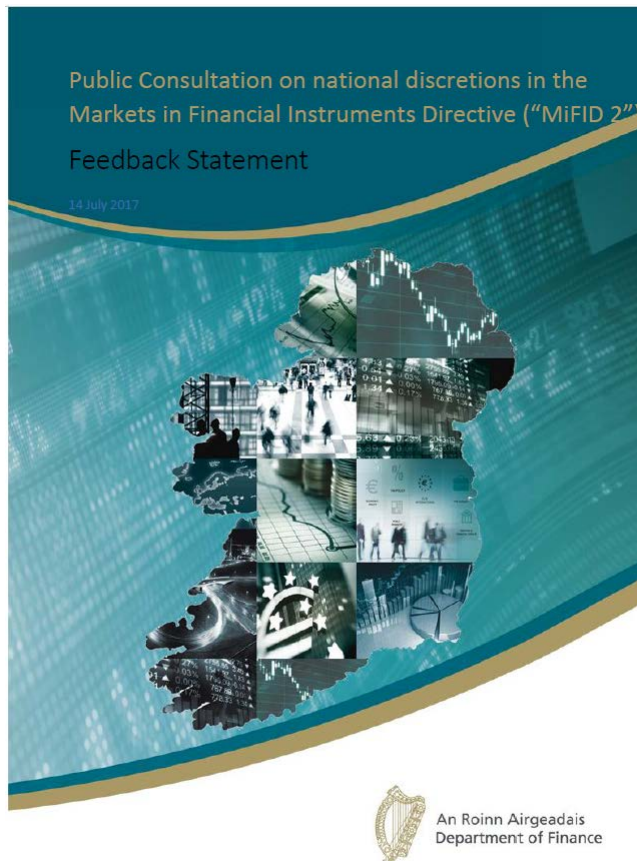
CPC.pdf



DearCeo.pdf

Commercial in confidence, strictly private and confidential

National Discretions



As Béarlágair

The Minister has decided to exempt firms qualifying under Article 3 (1) paragraphs (a), (b) and (c), though this exemption can only be on the basis of meeting the legal requirements in Article 3(2). The Minister acknowledges the argument that level playing field rules should apply but considers that to fully bring Article 3 (1) (a)-(c) firms into the MiFID framework would represent a disproportionate response having regard to the fact that the conditions to qualify for the partial exemption addresses the risks arising. The Minister also understands that very many such firms are micro enterprises providing services at a local level.

As Béarla

- Investment Intermediaries Act 1995 retained for 'local' firms
- Passporting still only possible in MiFID or IDD

As Gahan

- Free pass for the intermediated sector due to strong lobbying
- Nation discretions recognise industry mostly consists of "micro enterprises" and concern over "advice gap"
- No change in prudential requirements
- If you're already using our platform, not much change

Commercial in confidence, strictly private and confidential

Functional Equivalency



An Roinn Airgeadais
Department of Finance

As Béarlágair

The Minister notes the majority of respondents who addressed this question supported a level playing field approach and considers that different standards applicable to different types of intermediaries selling functionally equivalent products runs the risk of creating competitive distortions, leaving certain consumers in a more vulnerable position.

As an intermediary decision, the Minister pursued Option 2 presented in the public consultation. The Minister requested that the Central Bank, based on the criteria specified in the consultation document, provide him with a report for the purpose of informing his decision on whether the discretions provided in Article 24(12) of MiFID and Articles 22(3) and 29(3) of IDD should be exercised, and if so in what manner.

The Minister and his officials, having considered the contents of this report, has decided not to exercise the discretions provided in Article 24(12) of MiFID, at least not at this point in time.

Further consideration will be given following the outcome of a Central Bank public consultation on the payment of commission to intermediaries later in the year. The Minister and his officials are still considering the contents of the Central Bank report from the perspective of the relevant national discretions contained in *IDD*, including where it addresses level playing field issues and the use of the “independent financial advice” label.

As Béarla

- Decision on “functional equivalency” delayed

As Gahan

- Note emphasis on “selling” and not “advising”
- Another consultation on Commissions and Equivalency is forthcoming

Commercial in confidence, strictly private and confidential

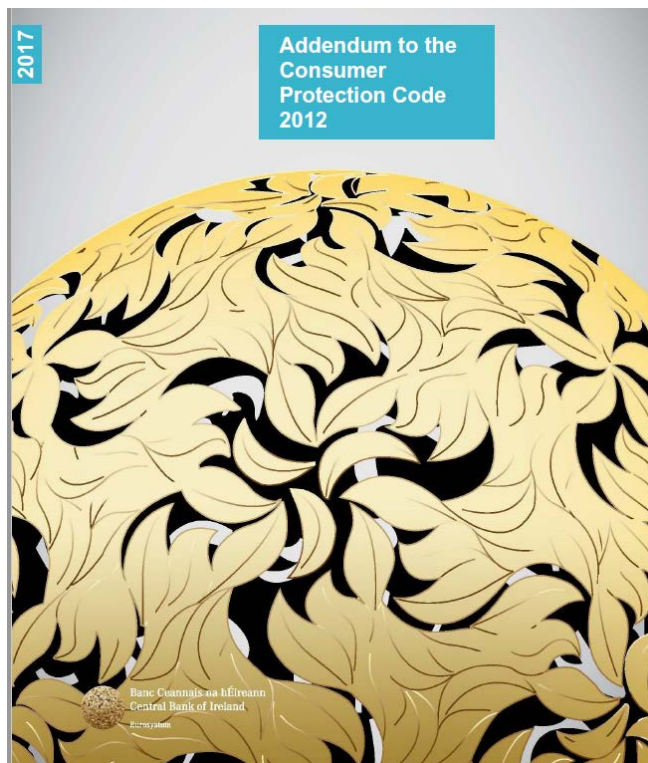
Main themes from Consultation Paper

- Concept of advisors largely being Micro-enterprises and advice gap mentioned
 - Representative body responses are high impact
 - Negative aspects of UK RDR alluded to, but no explicit positive aspects referenced
- MiFID 2 Requirements will be required to adhered prior to Insurance Distribution Directive
 - MiFID 2 – January 3rd 2018
 - PRIIPS – January 3rd 2018
 - IDD – February 2018
- Vast majority of advisors currently under IIA permissions exempted from “onerous” MiFID rule book.
- Further consultation to be issued
 - Would emphasis representative body and individual firm responses are HIGH IMPACT
 - Professionalisation of the sector will not happen without strong industry positions
- Gap Analysis performed – now addressed via Consumer Protection Code update
 - CPC update in the last few weeks variously described to me as “Swahili, gibberish & unreadable”
- Main focus on today will be look at these CPC updates which reference the Irish and EU texts and what they mean for Leading Edge Advisors



CPC.pdf

CPC Updates



Changes

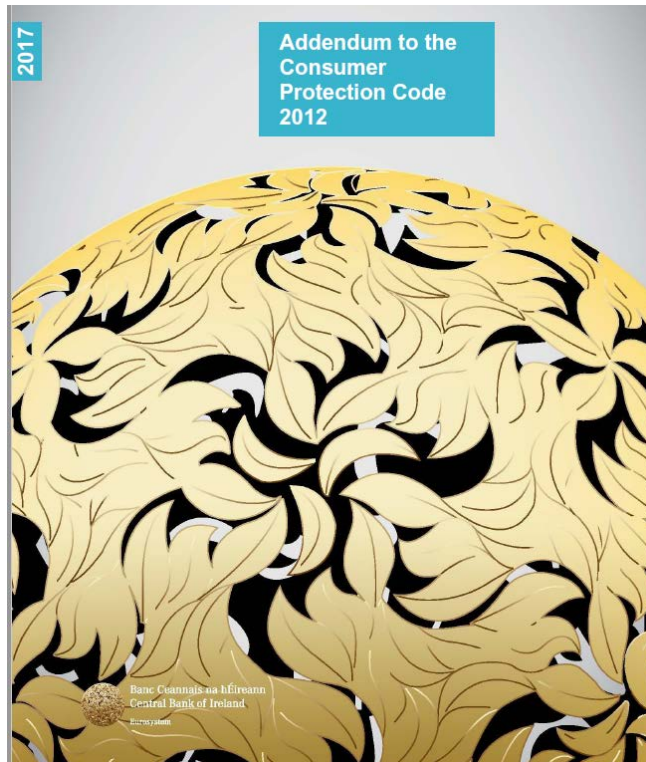
Chapter 4, 9, 12 – minor changes

Chapter 14 – new chapter

Changes Effective 3rd January 2018

Commercial in confidence, strictly private and confidential

CPC Updates

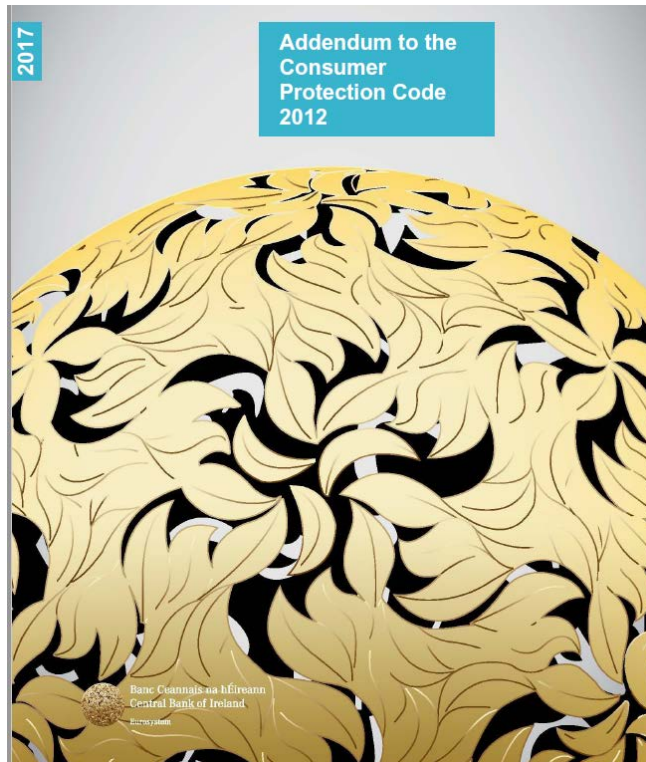


Changes

- Provision of information on pre-and post-advice charges
- Provision of total cost illustrations
- Information required on execution
- Past performance and simulated performance (backtesting) requirements & disclosures
- Use of benchmarks
- Documentation requirements where call recording not utilised
- Conflict of Interest Policies and Procedures
- Documentation of Investment Philosophy and Target Market Assessment Process – mapping investments to client characteristics

Commercial in confidence, strictly private and confidential

CPC Updates



Changes

- Policy for Outsourcing and Reliance on 3rd parties
- Independence Advice – disclosures and client facing documentation
- Non-Independent Advice – disclosures and client facing documentation
- Remuneration Criteria for employed advisors in firm
- Periodic Suitability Assessments – requirements and practical delivery (face to face and electronic delivery)

Commercial in confidence, strictly private and confidential

What is a MiFID Article 3 Service

(3) These Regulations do not apply to persons whose activities are regulated by the Bank, if the persons—

- (a) are not allowed to hold clients' funds or securities and therefore are not allowed at any time to place themselves in debit with their clients,
 - (b) are not allowed to provide any investment service except as follows:
 - (i) receiving and transmitting orders in transferable securities and units in collective investment undertakings;
 - (ii) providing investment advice in relation to those securities and units
- and
- (c) in the course of providing the services referred to in clause (i) of sub-paragraph (b) are allowed to transmit orders only to any or all of the following:
 - (i) investment firms authorised in accordance with the Directive or these Regulations;
 - (ii) credit institutions authorised in accordance with Directive 2013/36/EU;
 - (iii) branches of investment firms or of credit institutions authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those specified in the Directive, the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) or the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014);
 - (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of the undertakings;
 - (v) investment companies with fixed capital, as defined in Article 17(7) of Directive 2012/30/EU of the European Parliament and of the Council, the securities of which are listed or dealt in on a regulated market in a Member State.

TRANSLATION:

- Full MiFID will not apply to IIA firms
- However, certain analogous conduct of business rules will apply (via CPC), where you transmit orders to MiFID firms, banks selling MiFID products (e.g. structured deposits), or directly into UCITS funds

Commercial in confidence, strictly private and confidential

CPC Chapter 4 - Independence

4.16A: A regulated entity providing MiFID Article 3 services may only use the term ‘independent’ in its legal name, trading name or any other description of the firm where:

- a) the principal regulated activities of the regulated entity are provided on the basis of a fair analysis of the market; and
- b) the factors to be taken into consideration by the regulated entity in conducting its fair analysis of the market includes the criteria set out in Article 53(1)(d) of Commission Delegated Regulation (EU) 2017/565.”

TRANSLATION of (b):

- The criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

FURTHER TRANSLATION:

- Characteristics of Investment Firm’s Clients = Target Market Assessment (Filtering)
- Complexity Requirements: definition of non-complex now very narrow (UCITS and traded securities only)
- Costs: Retail vs. Institutional or Clean Classes

Commercial in confidence, strictly private and confidential

CPC Chapter 4 - Information

Where the regulated entity does not provide all of its regulated activities in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the consumer. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.”

TRANSLATION:

- None needed?

Provision 4.54 of the Code is dis-applied for a regulated entity providing MiFID Article 3 services.

INFORMATION ABOUT CHARGES

- 4.54 Prior to providing a product or service to a **consumer**, a **regulated entity** must:
- a) provide the **consumer**, on paper or on another **durable medium**, with a breakdown of all **charges**, including third party **charges**, which will be passed on to the **consumer**; and
 - b) where such **charges** cannot be ascertained in advance, notify the **consumer** that such **charges** will be levied as part of the transaction.

TRANSLATION:

- Above replaced with a more detailed requirement around own and 3rd party charges – addressed later

CPC Chapter 9 – Advertising Past Performance

“9.35A: Where a regulated entity providing MiFID Article 3 services gives information about the past performance of the advertised product or service or of the regulated entity, this information must:

- a) be based on a product similar to that being advertised;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or service;
- c) state the source of the information;
- d) be based on actual performance;
- e) state clearly the period chosen, which must cover the preceding five years, or the whole period for which the advertised product or service has been provided, where less than five years;
- f) include the most recent period;
- g) indicate, where they arise, details of transaction costs, interest and taxation that have been taken into account;
- h) disclose the effect of commissions, fees or other charges, where the indication is based on gross performance; and
- i) state, where applicable, the basis upon which performance is quoted.

TRANSLATION:

- “advertisement” means any commercial communication in respect of a regulated entity, which is addressed to the consumer public or a section of it, the purpose being to advertise a regulated activity or a regulated entity excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);
- Firm’s own Model Portfolios in scope?
- Outsourcing an option?

CPC Chapter 9 – Advertising Simulated Perf

“9.38A Where a regulated entity providing MiFID Article 3 services gives information in an advertisement about the simulated performance of the advertised product or service, this information must:

- a) be based on a simulated performance that is relevant to the performance of the advertised product or service;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or service;
- c) state the source;
- d) indicate whether, and to what extent, transaction costs, interest and taxation have been taken into account;
- e) for simulated past performance, be based on the actual past performance of one or more investment products which are the same as or substantially the same as the advertised product or service. The past performance used for this purpose must comply with the conditions set out at provision 9.35A.”

TRANSLATION:

- “advertisement” means any commercial communication in respect of a regulated entity, which is addressed to the consumer public or a section of it, the purpose being to advertise a regulated activity or a regulated entity excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);
- Firm’s own Model Portfolios in scope?
- Outsourcing an option?

Chapter 14 - Call Recording

Comply with **either**

- a) Regulation 23(5) – (12) of the MiFID Regulations 2017 and Article 76(1)(b), 76(8) and 76(10) of Commission Delegated Regulation (EU) 2017/565; or
- b) Where telephone conversations or electronic communications relating to the provision of client order services that relate to offering, arranging or providing an investment product are not recorded, the regulated entity must promptly follow up the telephone conversation with a written communication to the client which confirms the key details of the telephone conversation. This written confirmation, at a minimum, shall include the order details and the details of any recommendation in connection with that order. The regulated entity shall provide the client with an opportunity to disagree with the content of the written communication or to otherwise stop the order being executed within a specified time-frame.

TRANSLATION:

- Relates to order services (captured via original advices via Investor Policy Statements or Reasons Why?)
- For most firms, likely to go with the latter option as former is quite onerous. Likely this is a practice that is already in place.
- Note reference to Key details.
- Negative: No cool off period for execution, so sensible to let client know if buy or sell order is to be executed with immediate effect or not

Commercial in confidence, strictly private and confidential

Chapter 14 – Conflicts of Interest

- 14.2 A regulated entity shall ensure that disclosure to consumers shall include **a specific description of the conflicts of interest that arise** in offering, recommending, arranging or providing an investment product. The description shall **explain the risks to the client that arise** as a result of the conflicts of interest and the **steps undertaken to mitigate these risks**, in sufficient detail to enable that client to take an informed decision with respect to the investment business service in the context of which the conflicts of interest arise.
- 14.3 A regulated entity shall assess and periodically review, on an **at least annual basis**, its conflicts of interest policy and shall take all appropriate measures to address any deficiencies.

Translation:

- Important to have an actual working **real** Conflicts of Interest Policy
- Conflicts do and can exist, can't always be avoided, but can be disclosed or mitigated
- Inducements Analysis a key part of this. Lots of providers currently soul searching over how to address this.
- Likely to be a focus of future themed inspections

Chapter 14 – Target Market Assessment

14.4 Where a regulated entity **offers**, **recommends**, **arranges** or **provides** an investment product, it shall have in place adequate arrangements:

- a) to obtain all appropriate information on the investment product and the **investment product approval process**, including the **identified target market of the investment product**, and
- b) to **understand the characteristics** and identified target market of each investment product.

Translation:

- Obligation is on both intermediary and provider to have information on target market assessment
- Relatively easy to evidence with risk rated model portfolios, UCITS funds, ETFs
- For structured products or non-readily realisable securities, provider will be very focused on this information as likely to be a key point of regulatory inspections
- May require firms to filter, research and limit their universe, use CIP or DFM
- Clear way to demonstrate independence (can be an adopted process as part of Investment Philosophy)
- High level example overleaf

Commercial in confidence, strictly private and confidential

Example High Level Target Market Assessment

Annex 2: Thematic Investment Principles we currently utilise

Client Objective	Investment Objective	Risk Objectives	Best of Peer Group Managers
Pre-Retirement Accumulation	Core principles applied Capital Growth Human Capital to Financial Capital Transition Glide-Path transition based on Annuity, Cash or ARF options	Standard deviation vs. Return Varied based on level of human capital transition Varied based on at retirement options	Dimensional Fund Advisors Evidence Based Investments Morningstar Vanguard State Street Blackrock
Post-Retirement Decumulation	Core principles applied Capital Preservation Income in retirement	Managing sequencing risk Low drawdown Standard deviation vs. Return	Morningstar ML Capital AQR
Port Retirement Inheritance Planning	[REDACTED]		
Short Term < 3 Year Financial Goals			
Speculation			
CGT Harvesting			
Specific goal investing			
Combination of Above			

Commercial in confidence, strictly private and confidential

The Big one - Independent Advice

Commercial in confidence, strictly private and confidential

Chapter 14 – Independent Advice

- 14.5 A regulated entity shall comply with Regulation 32(13)(b) of the MiFID Regulations 2017, subject to Regulation 32(15) of those Regulations.

Direct translation:

- 32(13)(b) Where an investment firm informs a client that investment advice is provided on an independent basis, the investment firm shall subject to paragraph (15), not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to a client.
- (15) Minor non-monetary benefits that are capable of enhancing the quality of the service provided to the client and are of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client shall be clearly disclosed and are excluded from paragraphs (13)(b) and (14).
- 14.6 A regulated entity shall comply with Article 52(1) and Article 52(3) of Commission Delegated Regulation (EU) 2017/565

Further Translation:

- This is the fabled commission ban on Independent Advice. This is similar to RDR commission ban
- Enhancement Test only for minor non-monetary benefits – practical examples
- What about trail for products sold before January 3rd 2018?

Chapter 14 – Independent Advice

- 14.6 A regulated entity shall comply with Article 52(1) and Article 52(3) of Commission Delegated Regulation (EU) 2017/565

Direct translation:

- 52(1) Investment firms shall explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements.
- Where advice is offered or provided to the same client on both an independent and non-independent basis, investment firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.
- 52(3) Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments

Further Translation:

- This is effectively requiring a description of your Advice Process
- Many firms already do this or at least allude to it in their Investor Policy Statements or Investment Philosophy Document
- Change now is that is more process driven. This leads to better Investment Philosophy Documents

Commercial in confidence, strictly private and confidential

Additional – Independent Advice

- Article 53(1)
- Investment firms providing investment advice on an independent basis **shall define and implement a selection process to assess and compare a sufficient range of financial instruments** available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU. The selection process shall include the following elements:
 - a) the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;
 - b) the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;
 - c) the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and
 - d) the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased
- Where such a comparison is not **possible due to the business model** or **the specific scope of the service** provided, **the investment firm providing investment advice shall not present itself as independent**

Additional – Independent Advice

- Article 53(2)
- An investment firm that provides investment advice on an independent basis and that focuses on certain categories or a specified range of financial instruments shall comply with the following:
 - a) the firm shall market itself in a way that is intended only to attract clients with a preference for those categories or range of financial instruments;
 - b) the firm shall require clients to indicate that they are only interested in investing in the specified category or range of financial instruments; and
 - c) prior to the provision of the service, the firm shall ensure that its service is appropriate for each new client on the basis that its business model matches the client's needs and objectives, and the range of financial instruments that are suitable for the client. Where this is not the case the firm shall not provide such a service to the clients

Translation:

- No definition of non-independence in Regulations
- Bigger interpretation issue for Leading Edge Advisors is that the profession is process driven, not product driven, which appears to largely meet the definition of Independence
- What happens if you simply call yourself non-independent and then provide services that meet the definitions and processes as defined above?

Chapter 14 - Remuneration

- 14.11 A regulated entity shall comply with Article 27(4) of Commission Delegated Regulation (EU) 2017/565.

Translation

- Remuneration and similar incentives shall not be solely or predominantly based on quantitative commercial criteria, and shall take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients.

Further Translation:

- Remuneration for advisory staff cannot be predominantly commission based
- It's really just good corporate governance – been in place for a long time for MiFID firms
- Obviously doesn't apply to single member or owner manager entities, where remuneration will likely be highly correlated to quantitative criteria as owner drawings likely derived from advice to clients

Chapter 14 – Information Related to Execution

- 14.8 A regulated entity shall ensure that Article 59 of Commission Delegated Regulation (EU) 2017/565 is complied with.

Translation:

- Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order:
 - a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;
 - b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.
- Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

Further Translation:

- The executing broker or platform will typically do this.
- However, if receiving and transmitting orders outside of a MiFID firm or platform (e.g. direct subscriptions to UCITS funds or structured notes), responsibility falls on the advisor.
- Realistically, most firms will rely on platforms to satisfy this obligation



Sample Valuation Report.pdf

Commercial in confidence, strictly private and confidential

Chapter 14 – Information on Costs and Charges

14.9 A regulated entity shall comply with Regulation 32(4)(d) and Regulation 32(7) to (9) of the MiFID Regulations 2017 and Article 50(2), (5), (8), (9), second paragraph and (10) of Commission Delegated Regulation (EU) 2017/565.

Translation

- 32(4)(d) An investment firm shall ensure that appropriate information is provided in good time to clients or potential clients with regard to all costs and related charges.
- 32(7) For the purposes of paragraph (4), the information on all costs and associated charges shall include information relating to both investment services and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments.
- 32(8) For the purposes of paragraph (4), the information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated in order to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client requests an itemised breakdown shall be provided.
- 32(9) Where applicable, the information referred to in paragraph (8) shall be provided to the client on a regular basis, at least annually, over the lifetime of the investment.

Further Translation:

- Individual Costs + Aggregated TCO (Total Cost of Ownership) to be provided
- Advisor Costs + Platform Costs + OCFs on a Rate Card = bulk of compliance.
- Provided Annually on Statement (platform report would typically break these down and summarise also).
- Example overleaf

Commercial in confidence, strictly private and confidential

Chapter 14 – Info on Costs and Charges (cont.)

Portfolio Charges

Valuation Report: Mr Logan Pittman

Executive -

Account Holder Reference	Account Type	Base Ccy Charge	Portfolio Ccy Charge
TOTAL FEES AND CHARGES			
Mr Logan Pittman PITT207875	Direct (EUR)		
	Advisor Aui Commission (Quarterly Charge)	€922.89	€922.89
	Leap AUI Commission (Quarterly Charge)	€553.73	€553.73
	Model Portfolio Construction & Monitoring (Quarterly Charge)	€92.09	€92.09
		€1,568.71	€1,568.71
Mr Logan Pittman PITT207900	SSAS (EUR)		
	Advisor Aui Commission (Quarterly Charge)	€510.20	€510.20
	Conexim AUI Commission (Quarterly Charge)	€306.11	€306.11
	Model Portfolio Construction & Monitoring (Quarterly Charge)	€51.19	€51.19
		€867.50	€867.50
Mr Logan Pittman PITT768434	SSAS (EUR)		
	Advisor Aui Commission (Quarterly Charge)	€383.57	€383.57
	Conexim AUI Commission (Quarterly Charge)	€230.14	€230.14
		€613.71	€613.71
Portfolio Total			€3,049.92

Commercial in confidence, strictly private and confidential

Chapter 14 – Periodic Suitability Assessments

14.10 A regulated entity shall comply with

- a) Regulation 32(5)(c) of the MiFID Regulations 2017,
- b) Article 54(12), third paragraph of Commission Delegated Regulation (EU) 2017/565, and
- c) Article 54(13) of Commission Delegated Regulation (EU) 2017/565.

Translation:

- 32(5)(c) ... When investment advice is provided to a client by an investment firm, the obligation of the investment firm includes its informing the client in good time whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to the client.
- 54(12). Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.
- 54(13). Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

Further Translation:

- Effectively requires an annual suitability assessment
- Can be tied in with other reporting (e.g. annual valuation)

Commercial in confidence, strictly private and confidential

Dear CEO – MiFID Themed Inspection Findings on Suitability (Advisory and Discretionary)

29 August 2017

Commercial in confidence, strictly private and confidential

Dear CEO Letter on Suitability

- Focused on ESMA and MiFID 2 requirements for MiFID Firms on Suitability
- Interesting insight into changing role of MiFID from Stockbroking to Asset Management/Advice
- Best Practice Guidelines detailed overleaf
- Strong argument that some CFP and Advisor practices that we deal with would already be in better position in relation to MiFID 2 Independent Advice Process than many MiFID firms

Commercial in confidence, strictly private and confidential

Findings and Good Practice

Suitability Policies and Procedures, & Client Forms

Most relevant Guidelines: 2, 4 & 6

Finding:

Firms could not demonstrate that the documented suitability policies and procedures were implemented in practice. Client take-on forms did not contain specific fields for the collection of required information and / or were found to be incomplete i.e. fields left blank.

Good Practices Identified:

- Firms adopt the principal of proportionality and have more detailed application forms for more complex portfolios.
- Firms have embedded procedures for managing clients who insist on deviating from the firm's recommendations.
- Additional information required under MiFID II, such as capacity and tolerance for loss, are already included in client take-on forms.
- Questions in the client take-on form are drafted to prevent any distortion (either perceived or cognitive) which may impair the validity of the answer provided by the client.

Findings and Good Practice

Governance Structures

Most relevant Guidelines: 1, 3, 5 & 6

Finding:

Not all firms could demonstrate that they had effective governance structures and appropriate tools to successfully implement and assess suitability. A number of firms relied on client self-assessment of knowledge, experience and financial situation and failed to counterbalance self-assessment with an independent objective assessment.

Good Practices Identified:

- Objectively assessing clients approach to risk using tools which factor in psychometric testing and risk profiling. Both proprietary and third party tools were used in the inspected firms.
- Client take-on forms clearly and prominently highlight that the firm is gathering the necessary information in order to act in the client's best interest.
- The ratio of clients to Client Relationship Manager is actively monitored to ensure that adequate resources are allocated to carry out the suitability process.
- Embedding a suitability champion in the first line of defence to provide support to client facing staff.

Findings and Good Practice

Use of Technology

Most relevant Guidelines: 6, 8 & 9

Finding:

Dependency on basic I.T. systems for the management of suitability processes increased the likelihood of human error and did not facilitate second line controls carrying out monitoring.

Good Practices Identified:

- Systems with pre-trade simulation of the impact of a proposed transaction on the overall client portfolio risk profile assists Client Relationship Managers in ensuring no unsuitable positions were purchased.
- Automated triggers to ensure that suitability is assessed on at least an annual basis, as will be required under MiFID II.
- Trading systems which have hard limits to block purchases of a specific class of security by a certain client risk profile i.e. riskier securities blocked from conservative client portfolios.

Findings and Good Practice

Vulnerable Clients

Most relevant Guidelines: 2, 3, 4, 6, 8 & 9

Finding:

Governance structures (including clear policies and procedures) for the identification and safeguarding of vulnerable clients were absent or ineffective.

Good Practices Identified:

- Defining vulnerability broadly; not restricted to age and taking into account other factors such as personal circumstances and life changing events that could permanently or temporarily impact mental capacity or physical ability of clients.
- Assessing vulnerability status on an ongoing basis as it is a status that is subject to change over time.
- Recommending that vulnerable clients be accompanied to meetings by a trusted third party⁵.
- Ongoing training to assist client-facing staff in identifying signs of potential vulnerability delivered by a relevant charity or through the use of vulnerable client scenarios.

Summary

Commercial in confidence, strictly private and confidential

Summary of MiFID 2/CPC implications

- CPC implementation of Conduct of Business rules really is only a tiny fraction of the overall MiFID piece
- Jargon aside, it's pretty straightforward
- Higher standard of MiFID analogous rules for independent advice in CPC may suit Advisors as Process Driven
- Some concepts new – e.g. Target Market Assessments – obligation on advisors and providers
- Strong potential for differentiation for Advisors vs. Insurance Brokers and Stockbrokers
- Inducements and Conflicts of Interest a strong theme – expect to be found in Themed Inspections
- Bulk of systems requirements and reporting requirements by and large looked after by platforms
- Still some issues to be ironed out with Dept. of Finance and Central Bank
- I have a particular interest in getting your feedback for MiFID Working Group
- Will be running workshops in Oct, Nov and Dec on MiFID 2 compliance

Commercial in confidence, strictly private and confidential

LEAP Conference – October 24 2017



Regulation Updates for Leading Edge Advisors - 2018

Ronan Gahan

MBA, MSc, HDip, LIB, FCOI, LCOI, PTP, CDPO, CFCPP, QFA, APA

Managing Director – Risk and Compliance

DDI: +353 1 679 8087

TEL: +353 1 679 8080

MOB: +353 86 603 6191

FAX: +353 1 679 8741

E-mail: rgahan@conexim.ie

Web: www.conexim.ie