



MiFID Structured Retail Product Review

May 2022





Background:

On 22 April 2022, the Central Bank issued a letter setting out the findings from its recent series of targeted reviews of Structured Retail Products¹ (SRPs) and its expectations for all firms in relation to SRPs. This follows the Themed Inspection by the Central Bank in 2016. All firms are required to complete a full review of current SRP arrangements and controls against the findings and expectations in the Central Bank letter and make changes where necessary.

Firms are required to present the Central Bank letter as a formal agenda item for discussion at the firm's next Board meeting and present the results of the review for approval by the Board by the 30th September 2022.

Summary of Findings

The Central Bank identified a number of poor practices and weaknesses in firms' SRP arrangements and controls which increase the risk to investors. The key findings are set out below:

- 1 Failure to identify a sufficiently granular target market.
- 2 Inadequate consideration of the use of highly complex features in SRPs being manufactured and distributed to retail clients, which may be difficult for these clients to understand.
- 3 Failure to present fair and balanced past performance (back-testing) information, supported by appropriate context and narrative.
- 4 Not displaying capital at risk warnings in prominent positions for products where the client's capital is at risk.
- 5 Failure to ensure consistent levels of clarity and comprehensiveness in disclosures.
- 6 Inadequate disclosure of the risk and potential impact of restructuring to clients prior to sale.

¹ Structured Retail Products are compound financial instruments that have the characteristic of combining a base instrument (such as a note, fund or deposit) with an embedded derivative(s) that provides economic exposure to reference assets, indices or portfolios. In this form, they provide investors, at predetermined times, with pay-offs that are linked to the performance of reference assets, indices or other economic values.

Summary of Expectations:

The Central Bank letter emphasises the importance for firms to adhere to high standards of investor protection and to always act in the best interests of their clients. It sets out the Central Bank minimum expectations for all firms including the six key areas outlined which are a priority for the Central Bank.



Key Area	Key Considerations
Target Market	Firms should conduct an assessment of the target market in a proportionate manner, considering the nature and complexity of the product.
Product Features	<p>Where complex features are proposed for a product, firms must consider if they are appropriate for the retail market and whether the target market is likely to understand these complex features.</p> <p>The approval of the use of such features should be subject to robust governance and challenge and this should be clearly documented.</p>
Past Performance	<p>Where past performance (back-testing) information is presented, firms must ensure it is fair and balanced, supported by clear narrative and context, and does not diminish the potential likelihood of capital loss.</p> <p>Care must be taken to avoid presenting an overly-optimistic or unbalanced picture of the likely investor outcomes.</p>
Warnings	Firms must ensure that capital at risk warnings are in a prominent location in all marketing communications and advertisements.
Marketing	Firms must take special care when designing and presenting marketing information to ensure that individual statements, as well as the tone and overall content when read together, remain fair, clear and not misleading.
Product Restructures	Firms must ensure the risk that a product may be restructured is disclosed to clients prior to sale.



Impact of non-Compliance

As set out in the Central Bank letter, firms are reminded of their obligation to comply with all relevant requirements of MiFID II when manufacturing and distributing SRPs. The Central Bank has extensive enforcement powers (including the ability to issue fines) which it can use where firms are found to have breached legislative or regulatory requirements so it is imperative that all necessary steps are taken to ensure ongoing compliance and that Boards are aware of their responsibilities.

Actions Required

All Firms that manufacture, distribute or otherwise offer SRPs are required to conduct a review of their SRP arrangements and controls including:

- Present the Central Bank letter as a formal agenda item for discussion at the firm's next Board meeting, and for the discussion to be recorded in the Board meeting minutes.
- Undertake a full review of the firm's current SRP arrangements and controls against the findings and expectations outlined in the Central Bank letter. This review must include SRP design, manufacture and distribution, processes, procedures, training materials, templates and disclosures.
- Document the review and include details of actions arising that have been taken or are planned to address matters raised in the Central Bank letter.

The review should be completed and the action plan discussed and approved by the firm's Board by 30 September 2022. The action plan must include clear and reasonable timelines for implementation of mitigating actions with appropriate governance and sign-off.

How we can Help

With our combination of Risk and Regulatory expertise KPMG is uniquely placed to support you with the review required by the Central Bank.

We specialise in translating regulatory requirements into practical, operational and compliant processes and controls to protect our clients and their customers and have extensive experience in conduct related remediation projects relating to MiFID. We have also designed product governance and target market assessment frameworks for clients and advised them on their MiFID sales processes.

We can help ensure that you have the appropriate processes, systems and training in place to meet your regulatory obligations across all areas identified in the Central Bank letter.



01 Design the review methodology

Our team has deep technical expertise across all areas mentioned in the Central Bank letter and we can assist you with the design and implementation of the review in accordance with the Central Bank requirement. This includes a preparation of a report for your Board and a remediation plan for any gaps identified.



02 Conduct an independent assessment

We have extensive experience providing independent reviews of risk and control frameworks and compliance with regulatory requirements including MiFID II. We can conduct a high level independent review of your approach to deal with the Central Bank requirements set out in the recent letter and/or we can complete an in-depth review across all requirements providing an independent report to your Board.



03 Remediation of any issues identified

We have significant expertise and experience working with financial institutions on large remediation programs of work. We can work with you to plan and deliver any remediations arising from the assessment for the Central Bank.



04 Product Assurance

We have designed a bespoke methodology to arm organisations with tools and techniques to control their product set and align with the evolving and expanding Product Governance and client protection expectations. The methodology focuses on building a comprehensive process to assure products across the entire product life cycle with a focus on regulatory compliance, transparency and fair treatment of clients.

Contact us



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