



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Settlement Agreement between the Central Bank of Ireland

and

B.C.P. Asset Management Designated Activity Company

The Central Bank of Ireland imposes a fine of €210,000 on B.C.P. Asset Management Designated Activity Company for client categorisation failings

The Central Bank of Ireland (the “**Central Bank**”) has fined the investment firm B.C.P. Asset Management Designated Activity Company (the “**Firm**” or “**BCP**”) €210,000 and reprimanded it for breaches of the Conduct of Business Rules provided for under the European Communities (Markets in Financial Instruments) Regulations 2007 (the “**MiFID Regulations**”) (the “**Conduct of Business Rules**”). The breaches have been admitted by the Firm.

The Central Bank’s enforcement investigation identified significant failures by the Firm in respect of client categorisation under the Conduct of Business Rules. As a result of the Firm’s breaches, certain clients were not afforded the level of investor protection appropriate to their status as a Retail client.

The three breaches identified relate to:

- the Firm’s failure to carry out adequate assessments of eight Retail clients who elected to be treated as Professional clients;
- the Firm’s failure to take all reasonable steps to ensure that elective Professional clients met the quantitative test set out in the MiFID Regulations; and
- the Firm’s failure to have in place adequate policies and procedures for client categorisation.

The first two breaches commenced on dates between July 2013 and December 2013 when the clients were opted up as Professional clients and persisted for in excess of four years until full remediation was completed by the Firm on 1 December 2017. The third breach occurred for a two year period between July 2013 to June 2015.

Head of the Central Bank’s Enforcement Investigations, Brenda O’Neill, has commented as follows:

“Investment firms owe a duty of care to their clients and must place their interests at the heart of everything they do. Any failure by a firm to protect those interests is unacceptable.

The regulatory framework for investment firms contains strict requirements to ensure that clients are afforded all the protections to which they are entitled. Miscategorisation of Retail clients as Professional clients can have very serious impacts, including a client being exposed to elevated levels of investment risk and a loss of eligibility to investor compensation. Investor protections cannot be waived by a Retail client on an elective basis unless the firm has discharged its strict client categorisation obligations set out in the MiFID Conduct of Business Rules.

The approach to client categorisation adopted by the Firm fell short of the standard expected by the Central Bank. When opting up certain of its clients, the Firm placed undue reliance on clients self-certifying their status and too much weight on the fact that standard form documentation was transmitted to it by investment intermediaries. The Firm failed to gather sufficient supporting documentation to enable it to perform the due diligence required of it. It was incumbent on the Firm, before accepting their waiver of investor protections, to take reasonable steps to satisfy itself that the relevant clients were capable of making their own investment decisions and understood the risks involved. The Firm failed to take those steps.

This is the second settlement concluded by the Central Bank this year with an investment firm for failures in respect of compliance with client categorisation requirements and serves as a reminder of the importance the Central Bank places on investor protection.”

BACKGROUND

The Firm is authorised under the MiFID Regulations to receive and transmit orders and to provide portfolio management and investment advice (the “**Investment Services**”).

The Firm’s principal Investment Service is the manufacture and distribution of structured investment products. These products are tailored to either Retail or Professional investors with clients ranging from private individuals, pension funds, corporate entities and credit unions. The products are mainly sold to clients through the Firm’s agency network of investment intermediaries.

In November 2014, the Central Bank conducted an on-site inspection focusing on the Firm’s assessment of clients who elected to be treated as Professional clients at the point in time when they were taken on by the Firm.

The inspection was conducted on a sample of files from the Firm’s total of fifty MiFID Professional clients - nine of which had opted-up from Retail to Professional status. All nine were included in the sample. Each of the nine clients had opted up for the purposes of investing in an investment product structured as a fixed income plan (the “**Plan**”) which was for Professional clients only. The Plan’s stipulations included a

minimum investment of €100,000 and a term of either 3 or 5 years. Eight of the nine client who invested in the Plan were sourced through the Firm's agency network of investment intermediaries.

This inspection identified a number of issues in respect of the Firm's compliance with the client categorisation requirements provided for under the MiFID Regulations, prompting an Enforcement investigation into those issues.

PRESCRIBED CONTRAVENTIONS

The investigation identified three breaches of the MiFID Regulations, namely:

Failure to carry out an adequate assessment of the expertise, experience and knowledge of the clients it treated as Professional

Schedule 2 paragraph 3(3) of the MiFID Regulations requires the Firm to conduct an adequate assessment of the client's expertise, experience and knowledge to ensure that the client is capable of making his/her own investment decisions and understands the risks involved before accepting a waiver from a client who wishes to opt up to be treated as a Professional client. This requirement comprises a qualitative test. It is the Firm's obligation to carry out this assessment and it must be in a position to evidence to the Central Bank how a client has the requisite experience in order to be an elective Professional client.

The Firm's application pack for prospective investors in the Plan included a pro forma client declaration (the "**Declaration**") whereby the Firm required the client to indicate which two of a list of three quantitative criteria (as provided for pursuant to Schedule 2 paragraph 3(5) of the MiFID Regulations) the client determined it satisfied. The Declaration also contained a statement confirming that the client understood that by being treated as a Professional client for the purposes of investing in the Plan that the client lost certain protections and investor compensation rights. The Declaration referred to an attached document (the "**Protections Lost Document**") which listed the protections and compensation rights lost.

The investigation found that in respect of eight of the nine elective Professional clients, the Firm had failed to conduct an adequate qualitative test at the point when the clients were taken on. The Firm failed to conduct adequate due diligence, placing undue reliance on the fact that the Declarations were transmitted to it by investment intermediaries. Client categorisation at all times remained the responsibility of the Firm.

The Firm failed to provide evidence to the Central Bank that it took adequate steps to satisfy itself as to the relevant clients' expertise and experience and to verify that the contents of the Protections Lost Document were received, read and understood by the elective opt up clients.

Failure to take all reasonable steps to ensure that elective Professional clients met the quantitative test set out in the MiFID Regulations

Schedule 2 paragraph 3(7) of the MiFID Regulations requires investment firms to take all reasonable steps to ensure that a client who is to be treated as an elective Professional satisfies at least two of the following three quantitative criteria (pursuant to Schedule 2 paragraph 3(5)):

- (a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- (b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €500,000; and
- (c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Following the Central Bank's investigation, it was established that, in respect of eight of the nine elective Professional clients, the Firm had failed to take reasonable steps to ensure that all of the clients met at least two of the criteria set out above.

The Investigation found that the Firm believed it was appropriate to accept the client Declarations at face value without taking steps to verify their substance and accuracy. In this regard, the Firm placed undue reliance on the fact that the clients' self-certifications were transmitted to it by investment intermediaries. The Firm failed to produce documentary evidence to demonstrate that it had carried out its own due diligence to look behind the self-certifications. Regulated firms must put in place proper systems and controls against which compliance can be monitored.

Failure to implement appropriate written policies and procedures to categorise Professional clients

Schedule 2, Paragraph 3(9) of the MiFID Regulations requires firms to implement appropriate written internal policies and procedures to categorise clients.

The Central Bank's investigation established that the Firm's client categorisation policies and procedures were deficient for the following reasons:

- they failed to outline procedures for how the Firm would carry out an adequate assessment of the expertise, experience and knowledge of clients;
- they failed to address the reasonable steps that the Firm would be required to take before categorising elective Professional clients; and
- they failed to specify the documentary evidence which the Firm should require from clients prior to categorising them as elective Professionals.

These deficiencies revealed material weaknesses in the Firm's internal controls relating to client take-on and client categorisation. The Central Bank was particularly concerned that in two cases, following receipt of signed take on documentation, the Firm amended the incomplete Declarations received from

the respective intermediaries. The Firm did so following consultation with the relevant intermediaries but without the prior consent of the relevant clients. This was unacceptable in circumstances where the incomplete Declaration was a client self-certification that had already been signed by the client.

RECTIFICATION

The Firm has taken all necessary steps to rectify the breaches identified in the Central Bank investigation. The Firm has offered all remaining opt-up clients invested in the Plan the option to exit the Plan early with bonus interest and without any administrative charges. The Firm has put in place updated policies and procedures for the opting up of clients from Retail to Professional status.

PENALTY DECISION FACTORS

In deciding the appropriate penalty to impose, the Central Bank considered the following matters:

- The seriousness of the breaches – investor protection failings;
- The Firm's conduct in altering two already signed client declarations without the clients' consent;
- The contraventions revealed material weaknesses in the Firm's internal controls in the conduct of its business relating to client take-on and client categorisation;
- The extended period of time over which the breaches occurred;
- The Firm initially did not take adequate remediation steps, necessitating further engagement from the Central Bank before full remediation was completed;
- The co-operation of the Firm during the investigation and in settling at an early stage in the Central Bank's Administrative Sanction Procedure; and
- Action taken by the Central Bank in previous similar cases.

The Central Bank confirms its investigation into the Firm in respect of this matter is closed.

-End-

NOTES TO EDITORS

1. The Firm was first authorised as an investment business firm under the Investment Intermediaries Act, 1995. That authorisation was transposed to an authorisation under the MiFID Regulations on the coming into effect of those regulations on 1 November 2007.
2. The European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) are available to download [here](#).
3. The fine imposed by the Central Bank was imposed under Section 33AQ of the Central Bank Act 1942. The maximum penalty available under that Act is €10,000,000.
4. The fine reflects the application of the maximum percentage settlement discount of 30%, as per the Early Discount Scheme set out in the Central Bank's "Outline of the Administrative Sanctions Procedure" which is [here](#).
5. On 25 February 2014, the Central Bank of Ireland published its Programme of Themed Reviews and Inspections for 2014 (available [here](#)), which included a thematic review on firms' arrangements in relation to satisfying MiFID client categorisation and suitability requirements. On 19 June 2015, following the conclusion of the Thematic Inspection, a Dear CEO letter was issued highlighting the main issues that arose from the review. The Dear CEO letter on Client Categorisation under MiFID Themed Inspection of Investment Firms is available [here](#).
6. The investor protections that investment firms are required to afford to Retail and Professional clients differ considerably, as outlined below:
 - a. **Compensation:** Retail clients are eligible for compensation under the Investor Compensation Act, 1998, Professional clients are not;
 - b. **Disclosures:** Retail clients are entitled to more disclosure prior to the provision of service than Professional clients in respect of an investment firm's services, commissions, fees and charges, the safeguarding of client assets and best execution policy;
 - c. **Reporting:** the ongoing client reporting obligations are higher for Retail clients. For example, contract notes/periodic statements have increased frequency and contain defined content;
 - d. **Best Execution:** the best execution obligations on an investment firm are higher when executing Retail client orders than those for a Professional client; and
 - e. **Suitability:** the suitability obligation for Retail clients is higher than that for Professional clients.