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MiFID firms required to review best execution

On 10 November 2020, the Central Bank of Ireland (**Central Bank**) issued a 'Dear CEO' letter (**Letter**) setting out its findings arising from a thematic inspection of investment firms' compliance with the MiFID II best execution requirements.

The best execution requirements seek to ensure that investment firms take sufficient steps to obtain the best possible outcome for their clients when executing orders, taking into account price, costs, speed, likelihood of execution and settlement, size, nature and any other relevant consideration.

The Letter reminds firms that the best execution requirements play a critical role in the investor protection framework and are fundamental to the delivery of positive outcomes for clients. Work in this area forms a key part of the Central Bank's ongoing strategy for the MiFID sector.

Findings and Expectations

Gráinne McEvoy, Director of Consumer Protection at the Central Bank, is quoted in the press release accompanying the publication of the findings as saying:

> *"The findings of this review do not reflect the consumer-focused culture that the Central Bank expects to see embedded in firms*."

In many cases the Central Bank found that the root cause of the issues identified stemmed from a lack of investment in resources in compliance functions, leading to key compliance roles being vacant for prolonged periods and gaps in best execution second line capabilities. The Central Bank notes its concern at the adoption of 'tick-box' approach to compliance in the MiFID sector.

For further information on any of the issues discussed in this article please contact:

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The main findings and expectations of the Central Bank are set under three headings, as follows.

Best Execution Framework

1. Best execution frameworks were found to be at varying stages of development and in some instances it was found that firms were not complying with the best execution requirements. Firms were not reviewing their best execution policies at appropriate intervals and not complying with the reporting requirements in accordance with the standards set out in Commission Delegated Regulation (EU) 2017/576.

2. The inspection also observed a lack of awareness of best execution policies and procedures amongst some staff that, in many instances, resulted from little or no best execution training.

Central Bank Expectation: Firms must review their best execution frameworks to ensure they address the above issues. Robust training programmes should be implemented to assist staff at all levels in the organisation in performing their duties as part of the best execution process.

Governance

1. The Central Bank notes that it is particularly concerned at the lack of evidence of Board/committee "oversight and challenge" in the best execution process.

2. The inspection found insufficient governance around best execution monitoring, including a lack of clear decision-making processes and governance around adjustments to controls to record and monitor live prices for best execution.

3. The inspection also observed that compliance monitoring plans around best execution often lacked detail and, in some cases, were treated as 'tick-box' exercises**.**

Central Bank Expectation: Firms must have in place appropriate channels through which results of best execution monitoring are escalated to senior management and/or relevant committees for effective challenge and discussion, which are in turn feed back into execution policies and processes.

Assurance Testing

1. The inspection found that there was a lack of independent reviews of the end-to-end best execution process being conducted by internal audit (or similar assurance testing programmes).

2. Where firms did not have an internal audit function in place, the inspection observed limited assurance testing being completed.

Central Bank Expectation: Firms should have an assurance-testing programme in place to review the robustness of their current oversight, monitoring and assurance practices, and to initiate improvements where deficiencies are identified.

Next Steps

The Central Bank requires firms to consider the contents of the Letter and review their best execution frameworks against its findings and the good and poor practices set out in the Appendix to the Letter. Where issues are identified firms are expected to immediately develop and implement actions to mitigate any risk to customers.

Firms are required to discuss the Letter at their next Board meeting and to record the discussion in the minutes. The Central Bank will have regard to the contents of the Letter when conducting future supervisory engagement.

The Letter and the accompanying press release can be found on the Central Bank's website (link here).

If you have any queries about the information contained in this article, please contact Keith Waine or Enda McGeever, or your usual Dillon Eustace contact.

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