

Independent Trustee Company Limited

Public Consultation on national discretions in the Markets in Financial Instruments Directive (“MiFID 2”) incorporating elements of the Insurance Distribution Directive (“IDD”) - Response

Question 1

A *The Minister is minded to exercise the discretions provided for in Article 3 (1) (a)-(c). Do you agree with this approach? If not, please outline your reasons.*

Yes, we agree with this approach.

B *If persons described under Article 3 (1) (a)-(c) are exempted from MiFID, what provisions of MiFID, in your opinion, have no corresponding domestic rules/requirements which are at least analogous, in accordance with the list set out in article 3(2)? Please specify the amended domestic rules that would be required.*

No further provisions to those given as examples.

C *The Minister welcomes all views in regard to whether to exercise the discretions provided for in Article 3 (1) (d)-(e). In particular, the Minister is interested in the views of any entities that consider they may be in a position to benefit from the exercise of the discretion. If such entities exist in Ireland, they are requested to identify the regulatory regime that they are subject to and to what extent that meets the analogous requirements specified in article 3(2). In the absence of compelling reasons provided in response to this consultation, the Minister is strongly minded not to exercise the discretion.*

We do not have any strong views on these discretions.

Question 2 *Do you agree with the proposed approach? If not can you provide justifications?*

All investment firms should be covered by the ICCL, however, the status quo is not efficient. Currently, investment firms who deal with the same client in relation to the same transaction, for example in a receiving/transmitting chain, are all required to pay ICCL levies in respect of that client/transaction. This creates higher costs for clients as all firms in the chain will pass this cost to consumers. We submit that the ICCL levy should be paid by the investment firm which receives the client's funds only.

Question 3

A *In light of: - the new MiFID and IDD rules, - their divergence in key respects (as outlined above), - the national discretions provided therein (as outlined above), and - the need for appropriate levels of protection for consumers of investment products, whoever they may deal with, do you consider that there should be level playing field rules in relation to the distribution of, and advice on, functionally equivalent retail investment products?*

We agree that a level playing field is preferable in relation to distribution of and advice on products. We submit that IIA firm's requirements should be brought in line with IDD rules rather than MiFID II. Our view is based on the fact that the IDD is the dominant form of intermediation in Ireland and harmonising the IIA to any other standard would conflict with the desire to create a level playing field.

B *If not, can you please explain why level playing field rules should not be followed?*
N/A.

C *Which option, if any, do you think best addresses the interests of retail investors and why? If your preference is for option 2 can you please specify whether you agree with the suggested criteria ((a) to (h) as outlined above).*

Our preference is for Option 2. We submit that the discretionary regulation-making powers referred to in Option 1 should only be provided to the NCA if a consultation and review mechanism is put in place first. We agree with the criteria as set out under Option 2.

Question 4 *Do you agree with the Minister's proposal to continue to exercise this discretion?*
Yes.

Question 5

A *The Minister is considering the policy options in relation to this national discretion. Please provide any views you may have on this issue, including supporting rationale for or against imposing a branch requirement.*

We do not have strong views on this matter.

B *Do you agree with that branches of third country firms should be brought within the scope of the MiFID 2 regulations? If not, please provide reasons why you do not favour this approach.*

We do not have strong views on this matter.

Question 6 *This Article was not previously included in MiFID 1. The Minister is minded to exercise this discretion by extending to regulated markets the flexibility to impose higher fees for cancelled orders. Do you agree with this proposal?*
Yes.

Question 7 *The Minister, having regard to the supervisory role exercised by the Central Bank in relation to MiFID I and more generally financial services legislation, and in the absence of any compelling reasons to the contrary, is strongly minded to designate the Central Bank as the single National Competent Authority for MIFID and the transposing Regulations. Do you agree?*

Yes, however, we are also of the view that the Central Bank of Ireland and the Pensions Authority should merge for efficiency purposes. We know the issue has been considered before. However the existence of multiple regulators in relation to different aspects of the same firm or the same product or service leads to conflicting requirements and inefficiencies, is out of step with the approach elsewhere in Europe and undermines our status as a Financial Services Centre.

Question 8

A *Do you agree with the Minister's views as outlined above?*

Yes, with the proviso that all sanctions or measures should be commensurate with the nature, scale and complexity of the firms under investigation.

B

Do you agree with the Minister's views as outlined above?

Yes, with the proviso that all sanctions or measures should be commensurate with the nature, scale and complexity of the firms under investigation.

Question 9

Are there any other Member State discretions or issues related to the transposition of MiFID 2 that you wish to outline? Please specify the provision of MiFID 2 which is required to be transposed or the area of concern identified.

Care is required in relation to the implementation of the MiFID II provisions relating to financial advice. The Retail Distribution Review measures in the UK have led to a decrease in the number of financial advisors and a decrease in the proportion of retail investment products being sold with financial advice, caused by advisors exiting the market or making their services too expensive for one-off or limited advice to consumers. There is a need for regulatory changes to avoid increasing costs to consumers.