Welcome to the MiFID II Masterclass Series

September 2016
Irish Tax Firm of the Year
European M&A Tax Deal of the Year
International Tax Review 2016
European Law Firm of the Year
The Hedge Fund Journal 2015
Financial Times 2012-2015
Matheson is ranked in the FT’s top 10 European law firms 2015. Matheson has also been commended by the FT for corporate law, finance law, dispute resolution and corporate strategy.

MiFID II - Masterclass Series Session 4
29 September 2016

Joe Beashel
Overview

- Delegated Directive – 2398
  - Reporting to clients
  - Best Execution
  - Client Order Handling
  - Record Keeping
    - Recording of telephone calls / emails – Article 16(7) of main directive
    - Annex 1 list

- Level 3 measures
  - “Knowledge and competence”
  - Cross-selling
ESMA Guidelines for the Assessment of Knowledge and Competence
Level 3 Builds on MiFID II Text

- Article 25(1) of MiFID II requires firms to “ensure and demonstrate” that persons giving investment advice or information about financial instruments or services have the necessary “knowledge and competence” to comply with their obligations.
- These obligations are those in MiFID designed to ensure investor protection – eg acting honestly, fairly, and professionally and in the best interests of clients.
- Competent authorities and firms “must make every effort to comply with the guidelines.”
Scope

- **Staff**: Natural persons (including tied agents) providing relevant services to clients on behalf of the investment firm.
- **Relevant services**: Providing investment advice or giving information about financial instruments, structured deposits, investment services or ancillary services to clients.
- **Intended to establish a min harmonised level of knowledge and competence**.
- **Considerable overlap with Minimum Competency Requirements (MCR)**.
Knowledge and Competence Criteria - Information

- Staff must have the necessary knowledge and competence
- Detailed listing of criteria to be assessed when:
  - “giving information” – see page 7 and
  - “giving investment advice” – see page 8
- This lists look much the same as the MCR competencies but is more specific – there is no indication that the CBI plans to update MCR but it might as it works through MIFID implementation
- Existing qualifications not affected
Organisation Requirements for Assessment, Maintenance and Updating of Knowledge Incompetence

- Requirement to set out responsibilities of staff and clear distinctions in descriptors of responsibilities between the roles of giving advice and giving information
- Firms should:
  - Assess qualification criteria for staff
  - Carry out internal or external reviews and at least an annual basis of development and experience
  - Assessing relevant regulatory developments in order to comply with the requirements
  - CPD assessment and additional training needs assessments
Organisation Requirements for Assessment, Maintenance and Updating of Knowledge Incompetence

- Preventing staff from providing relevant services unless they are appropriately trained or supervised (client meetings and emails)
- Responsibilities on supervisor to be appropriately trained
- Supervision to be tailored to the staff member
- Supervisor responsibility for the provision of the relevant services being provided under supervision
- Maximum four year supervision period
Annex to the Guidelines

- Practical examples eg those not in scope:
  - Giving our leaflets, brochure, KIID etc not in scope assuming the staff member does not “… give additional information with regards to its content or providing any follow up investment services to those clients…”

- To show necessary skill, knowledge and competence:
  - Firms should have a code of business conduct and behaviour where staff acknowledge in writing that they have “read, understood and complied with it”
ESMA Guidelines on Cross-selling
Scope

- Article 4(1)(42) refers to “cross-selling practice” as “the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package”
- The rules are very similar to those contained in the Consumer Protection Code (CPC)
- Addressed to Competent Authorities but we can assume CBI will agree to apply them
- 10 Guidelines
Guidelines – Specific Detail

- Examples of practices – packaged products – Full disclosure of price and cost information
  - Illustrative example:

  “When cross-selling an interest rate swap with a variable rate loan to allow a client to hedge interest rate risk (i.e. the client swaps his/her floating rate payment for a fixed interest rate payment) the firm provides key information to the client on all aspects of the swap agreement which will materially affect the cost the client finally incurs such as the client’s potential payment liability when interest rates change and the exit charges from the swap contract.”
Guidelines

- Prominent display and timely communication of price and cost information
- Full disclosure of key information on non-price features and risks, where relevant
- Prominent display and timely communication of key information on non-price features and risks, where relevant
- Prominent display and communication of ‘optionality of purchase’
Guidelines

- Conflicts of interest in the remuneration structures of sales staff
- Post-sale cancellation rights
Examples of Detrimental Cross-selling Practices

- Cross-selling with a monetary detriment:
  - Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same firm (as long as products have the exact same features in both cases)
Examples of Detrimental Cross-selling Practices

- Example with reduced mobility detriment
  - Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider or threatening with the termination of the contractual relationship regarding another product included in the package.
Examples of Detrimental Cross-selling Practices

- Example of purchase of unwanted or unnecessary products
  - Offering a product bundled with another product that has not been requested by the client when the firm is aware or should be aware that the product unnecessarily duplicates another product that the client already has and cannot benefit from (including because the customer is not eligible)
Contact

Joe Beashel
Matheson
70 Sir John Rogerson's Quay
Dublin 2

T:  +353 1 232 2101  
F:  +353 1 232 3333  
E:  joe.beashel@matheson.com  
W:  www.matheson.com