Welcome to the MiFID II Masterclass Series

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MiFID II - Masterclass Series Session 3
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Overview

- Delegated Directive C(2016) 2398 final
  - Organisational requirements
    - Complaints handling
    - Remuneration
    - Outsourcing
    - Conflicts of Interest
  - Operating conditions
    - Information to clients and potential clients
    - Investment advice
    - Suitability and Appropriateness
Complaints Handling and Remuneration

- Complaints handling - Article 26
  - Within compliance or a stand alone function?
  - Specific role to be filled – CF responsibility?
  - Reporting obligation – demonstrating compliance through preparation and circulation of a report

- Remuneration – Article 27
  - Management body to “take advice” from the compliance function prior to approving it.
Outsourcing

- Article 29 (5)(c) Personal Transactions
  - Very specific requirement on the provider of outsourced services on recording of personal transactions by any relevant persons

- Article 30
  - Wide ranging obligation on requirements related to “critical” or “important”
  - Provisions similar but not identical to MiFID I
Outsourcing

- Article 30 (2)(b)
  - Assessment of effectiveness of the service provider
  - On-going obligation to review

- Article 31 (2)(g)
  - Termination “with immediate effect in the interests of clients”
  - Service provider resistance?

- Article 31 (2)(l) and (3)
  - Central Bank expectations on continuity of service upon transfer of service to another service provider / back in-house
  - Specific requirement for written consent to sub-outsourcing
Conflicts of Interest

- Article 34 - Policy
  - “measure of last resort”
  - More bespoke disclosures – review and sign-off challenge
  - Compliance function monitoring role on use of disclosures
  - Over-reliance to be considered a deficiency
Information to Clients

- Information to be provided to all professional clients
- General information to all clients
- Detailed information on financial instruments to be provided to clients
  - Insolvency of an issuer
  - Impediments or restrictions for disinvestment
Investment Advice

- General requirements for advice - independent and if not independent
  - Requirement to include an explanation of independent or not
  - Ability to offer both independent or non-independent
  - Note the independent advice provisions in the general Article 52 in addition to specifically in Article 53

- Specific independent advice measures set out in Article 53
  - Niche operators
  - Obligations to be considered when offering both
Suitability and Appropriateness

- Requirement for an assessment
- Robo-advice
- Specific approach to dealing with groups / entities
- Assessment tools to be specifically calibrated
- Understand-ability of the product to be demonstrated
- Product switching justification – cost analysis
- Annual Review – recommendation to be given as required
- Execution only exemption refined
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