

Response to CESR's consultation on Inducements: Good and Poor practices

The Nordic Securities Association (NSA) represents the common interests of member firms in the Nordic securities dealers associations towards external stakeholders primarily in the Nordic market but also on European and international issues of common interest. Members of the NSA are the Danish Securities Dealers Association, the Finnish Federation of Financial Services, the Norwegian Securities Dealers Association and the Swedish Securities Dealers Association.

The NSA welcomes the opportunity to comment on CESR's consultation paper on Inducements: Good and poor practices.

General remarks

The NSA finds the consultation paper interesting but does not for the time being recognize any urgent call for further guidance on the MiFID regulation on inducements which CESR has already provided guidance on in its level 3 recommendations in May 2007. Furthermore we find it important to stress that CESR's document must be seen as guidance and that arrangements that resemble the arrangements described as poor practice could not per se be considered objectionable. Consequently the NSA finds CESR's remark in paragraph 8 "CESR discourages these practices, which in many cases will lead a firm to be in breach of MiFID inducements rules" concerning.

Furthermore CESR's document constitutes a very detailed regime on inducements adding unnecessary complexity. It is very important to maintain flexibility for banks and investment firms (firms) to set up internal arrangements in a way that fit the nature and size of their business. Moreover CESR should bear in mind the principle of proportionality in a way that the arrangements set up by a firm could allow for e.g. the size and frequency of the inducements in question. Thereby exaggerated administrative burdens could be avoided.

Date
21. december 2009

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File no. 514/19
Doc. no. 243254-v1

Classifying payments and non-monetary benefits and setting up an organisation to be compliant

1. Do you agree with CESR's views about the arrangements and procedures an investment firm should set up?

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CESR seems to describe inducements rules exclusively in situations where inducements are related to a specific transaction and not inducements related to several transactions and depending on the volume of transactions. Therefore CESR's approach does not encompass all market practices which CESR ought to take into consideration when finalising the document.

2. Do you have any comments on CESR's views that specific responsibilities and compliance controls should be set up by investment firms to ensure compliance with the inducements rules?

The NSA finds it important to bear in mind that inducements rules are a part of the entire compliance policy within a firm and that inducements controls could be included in the compliance controls handling conflicts of interest as such – arrangements should not necessarily be set up separately! As mentioned in the general remarks it is important to maintain flexibility for firms to set up internal arrangements in a way that fit the nature and size of their business.

3. What are your comments about CESR's view that at least the general approach the investment firm is going to undertake regarding inducements (its 'inducements policy') should be approved by senior management?

The NSA in principle agrees on the requirement on senior management to approve on firms' general approach to inducements but finds it essential to repeat that the inducements regime should maintain flexibility for firms to set up arrangements that fit the size and nature of the firm in question.

Proper fees

4. Do you agree with CESR's view that all kinds of fees paid by an investment firm in order to access and operate on a given execution venue can be eligible for the proper fees regime (under the general category of settlement and exchange fees)?

The NSA agrees that such fees should be considered proper fees.

5. Do you agree with CESR's view that specific types of custody-related fees in connection with certain corporate events can be eligible for the proper fees regime?

The NSA agrees that custody related fees would typically be considered proper fees.

Side 3

Payments and non-monetary benefits authorised subject to certain cumulative conditions – acting in the best interests of the client and designed to enhance the quality of the service provided to the client

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7. Do you agree with CESR's view that in case of ongoing payments made or received over a period of time while the services are of a one-off nature, there is a greater risk of an investment firm not acting in the best interests of the client?

The NSA does not agree on CESR's view. On the contrary larger one-off payments could possibly create undesirable incentives to encourage more frequent client transactions. Ongoing payments would be normal practice when the client in question is looking for suitable long-term investment products, and ongoing payments would normally be connected with ongoing services e.g. that advice and information on the product would be at disposal of clients.

8. Do you have any comments regarding CESR's view that measures such as an effective compliance function should be backed up with appropriate monitoring and controls to deal with the specific conflicts that payments and non-monetary benefits provided or received by an investment firm can give rise to?

The NSA finds that transparency towards the client on the amount, purpose and recipient of the fee is an important factor in managing conflicts of interest in connection with third party payments.

Furthermore the requirements on appropriateness test suitability test and best execution should also be taken into consideration as important factors when managing conflicts on interest in connection with third party payments.

9. What are your comments on CESR's view that product distribution and order handling services (see §74) are two highly important instances where payments and non-monetary benefits received give rise to very significant potential conflicts? Can you mention any other important instances where such potential conflicts also arise?

10. What are your comments on CESR's view that where a payment covers costs that would otherwise have to be charged to the client this is not sufficient for a payment to be judged to be designed to enhance the quality of the service?

The NSA does not agree on CESR's views. Costs savings for the client could satisfy the "designed to enhance" requirement as there would be a direct link between quality and costs from the investors' point of view.

As regards question 9 and 10 CESR has focused on examples on poor practices. However it is important to bear in mind that ongoing payments - as stated in CESR's recommendations from 2007 - could enhance the service for the customer, why the examples regarding question 9 and 10 should be developed to include examples on good practice.

Payments and non-monetary benefits authorised subject to certain cumulative conditions – Disclosure

The NSA finds it important to emphasise that the need to maintaining flexibility –as mentioned in the general remarks – also applies to requirements on disclosure.

13. Do you have any comments on CESR's views on the use of bands?

The NSA finds it important to stress that bands are commonly used in summary information as a consequence of the fact that clients' investment objectives could change during the duration of the contract; whereby the use of bands would be more informative in general and thereby more investor-minded.

14. Do you agree with CESR's views on the documentation through which disclosures are made?

The NSA is concerned with CESR's views on page 38 that the splitting of information on inducements payments between two or more documents should be considered poor practise. The NSA agrees that firms should provide transparent and accessible information on inducements and finds that CESR to a greater extend should focus on the content of the disclosures than to the number of documents. Furthermore flexibility should be maintained in order for firms to design the information on inducements in a way that fit the financial service or instrument in question and the way it is distributed.

Yours sincerely

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