



ABI response to CESR Consultation: Inducements under MiFID

The ABI is the trade association for Britain's insurance industry. Its nearly 400 member companies provide over 94% of the insurance business in the UK. It represents insurance companies to the Government, and to the regulatory and other agencies, and is an influential voice on public policy and financial services issues. ABI member companies hold up to a sixth of all investments traded on the London Stock Exchange, on behalf of millions of pensioners and savers.

Although insurance is specifically excluded from MiFID, it affects UK insurers in two ways. Firstly, as investment managers, our members are within the scope of MiFID. Secondly, the Financial Services Authority (FSA) has adopted a case-by-case approach - which the ABI supports - to the implementation of MiFID concepts and rules to non-scope business, including retail insurance.

The ABI welcomes the opportunity to respond to this consultation on Inducements under MiFID (CESR/06-687). However, we are concerned that no explanation is provided in the consultation paper on why CESR might issue a recommendation to its members on inducements. National regulators and investment firms are currently focused on the huge challenge of transposing and implementing MiFID. It may be premature for CESR to issue a recommendation at this stage. If it decides to do so, we recommend that CESR should make clear its purpose.

We also seek more clarity about the status of a Level 3 recommendation, and in particular how it interacts with rules issued by the national regulator. The FSA has already consulted on conduct of business regulation post-MiFID, and it has made rules and guidance to meet the 31 January 2007 transposition deadline. Our members need to know whether they can rely on compliance with the CESR recommendation in the event of any dispute with national regulators.

We support the overall objective of the MiFID inducement provisions – to prohibit firms from paying or receiving benefits that would conflict with their duty to act in the best interests of clients. However, the MiFID regulations have been a cause of uncertainty for UK firms. The industry has pressed the FSA for a clearer definition of inducements and clarification of related themes. The CESR proposals present similar concerns, particularly as they include further interpretations that risk adding further confusion.

We now make some specific comments regarding the consultation paper:

- We agree with CESR that, as Recital 39 of the Directive makes clear, commission payments are legitimate and can enhance the quality of investment advice, provided that they do not bias the advice or recommendation. Commission payments are the most common method of remuneration for financial advisers in the UK. We also agree that there should be no price cap on commission payments, as it would be anti-competitive. But given this, CESR should make clear that it would not regard all commission payments in excess of the average to be “disproportionate to the market”.



- The list of examples in paragraph 25 is limited and non-exhaustive. In our view, this is inevitable given the wide variety of business models and interactions in the market. But CESR should make clear that its role is not to attempt to provide an exhaustive list of examples.
- We agree that examples 3 and 7, which are related to portfolio managers, are likely to be in breach of Article 26.
- However, we are concerned that training is included in the list of examples of non-monetary benefits that must be valued and disclosed. The ABI has proposed to the FSA that training courses for intermediaries should not usually be regarded as a non-monetary benefit for the purposes of Article 26. Insurers often offer seminars to intermediaries and this can improve the quality of the service they provide to their customers. Furthermore, it is difficult to disentangle the aspects of training that relate to MiFID scope and non-MiFID scope investments. In the unlikely event that training was provided in an exotic holiday location, we agree with CESR that a conflict of interest might arise. But training should usually be regarded as an initiative that raises standards in the market, not as an inducement for a specific firm that risks consumer detriment.
- Nor should normal and reasonable entertainment fall within this category. The building of a relationship between product provider and the intermediary can have a long-run benefit to customers (such as swifter resolution of customer queries). But often there will be no direct link to the provision of investment advice to a customer and it is hard to measure the benefit for specific customers.
- We strongly agree that it would not be useful for CESR to provide guidance on the exact format and content of summary disclosures. It would be impractical and inflexible to prescribe a single format for different markets.
- CESR should also acknowledge that it would be impractical and costly for providers to give exact disclosure details for thousands of intermediaries, each of whom may be receiving different benefits. The use of a summary disclosure outlining the types of non-monetary benefits that have been provided is far more practical. Article 26 requires the firm to disclose further details if they are requested by the client.
- We agree that it is the distributors' duty to disclose any payments or benefits to the end customer. We also believe that it is the distributor's responsibility to justify the receipt of the fee/payment given that they maintain the relationship with the customer.
- Our members do not believe that the scope of Article 26 is clear enough in relation to portfolio managers. For some market participants, such as brokers, it is relatively easy to determine which fees are related to the provision of investment or ancillary service. However, for portfolio managers, whose service is not so transaction-oriented, it is particularly difficult to interpret Article 26(c) provisions and the very limited list of



'proper fees'. For example, are research costs paid out of portfolio manager's own pocket meant to be captured under 26(c)?

- We do not believe that the impact of Article 26 on the softing and unbundling rules in the UK will be significant as the current arrangements are broadly similar.
- CESR should not develop a common supervisory approach on softing and unbundling. The overarching MiFID provisions on inducements and conflicts of interest will apply across the EU – how they are translated into specific softing and unbundling arrangements can be left to firms and regulators in individual Member States.