Association of British Insurers

Inducements under MiFID – Second Consultation Paper

ABI Response

Introduction

The Association of British Insurers (ABI) represents nearly 400 member companies, which between them provide 94% of the UK's domestic insurance. It works on behalf of the UK insurance industry to keep standards high and to make its voice heard.

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.

We welcome the publication of a second consultation paper on the inducement rules under MiFID. This paper addresses many of the issues that we raised in our response to the first consultation.

We particularly welcome the greater clarity about the role and status of CESR's recommendations. We agree that the recommendations should be applied on a voluntary basis by CESR members, with a post-implementation review of the approach taken to inducements.

Finally, 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. We have pressed the FSA for clarity on how they might respond to the CESR recommendations who cannot be definitive about this at present, but do not rule out the possibility of consulting further. Either way, we would now expect the FSA to use their MIFID policy statement to clearly set out their approach.

Questions for Consultation

Question 1: Do you have any comments on the content of the draft recommendations?

We are broadly supportive of the draft recommendations. We particularly welcome Recommendation 2, which states that Article 26(a) should apply in circumstances where the fee or commission is paid by the client or by a person acting on their behalf. In the UK, there is currently a debate about the benefits of enabling this method of remuneration for investment advice, and this proposal is consistent with that objective.

We welcome the reference in Recommendation 5 to Recital 39 of the Level 2 Directive. This makes clear that commission payments for advice can be considered to be designed to enhance the quality of the service, provided that they do not bias the advice.

However, we are concerned by the requirement in Recommendation 6 for the summary disclosure to be linked to the particular investment service or product provided to the client. We fear this could be impractical to operate without incurring disproportionate costs. For example, a MiFID-scope provider might provide a range of general training courses about investments to different groups of financial adviser firms, some of which are within MiFID's scope, and some of which are not. In addition, the adviser firm will often be advising on both MiFID and non-MiFID investments, and it will not be clear whether the advice is within MiFID scope until well into the process. In these circumstances, it will be complex for providers and clients to identify the specific enhancements to the quality of service offered by MiFID scope advisers. We suggest a generic disclosure of the possibility of training courses having been provided would be a more proportionate approach. Clients would, of course, be able to request more specific information if they require it.

We are disappointed the paper does not address how a firm might show that the provision of a "fee, commission or non-monetary benefit" has enhanced the quality of the service provided to the customer. It would be helpful for CESR to develop a recommendation and/or an example on this issue.

Question 2: Will the examples prove helpful in determining how Article 26 applies in practice? What other examples should be covered or omitted?

The ABI welcomes the provision of examples, and the flow charts at Annex B, which help raise understanding of the application of the recommendations. However, in most cases, the examples are fairly predictable consequences of the Recommendations. It would be helpful to add some examples that

addressed less clear issues, such as circumstances where advisers do both MiFID-scope and non-MiFID scope business.

We agree with the sensible statement in the consultation paper that, “small gifts and minor hospitality below a level specified in a firm’s conflicts of interest policy are irrelevant for this purpose”. We suggest that an example should be added to illustrate this point.

Question 3: Do you have any comments on the analysis of the examples?

As noted above, we are concerned by CESR’s approach to the provision of training courses, which are very unlikely to raise a conflict of interest. While we agree with CESR’s comment that the provision of training in an “exotic holiday location” is more likely to raise concerns, we propose that CESR should also make clear that general training courses are acceptable and fall outside of the scope of Article 26(b).