

CESR consultation questions

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

Partly. The setting up of arrangements and procedures is closely connected to the size of the firm and the services it provides. For big investment firms the setting up of procedures and arrangements can be useful to be sure the firm is compliant with the inducement rules. In the Netherlands a special legal framework has been set up, the so called Mifid National Regime. For small firms the situation is much different. The complexity of the services small investment firms and intermediary firms provide, is minor. Intermediaries for example give investment advice and/or receive and pass orders. They do not administrate any clients money. For these reasons, other standards should apply. Often small firms have at a single glance an overview of the remuneration agreements they have made with big investment firms. The inducement policy of this small firm can be written on one page. We share therefore the view of CESR that there should be flexibility with regard to the extensiveness of the arrangements. These must depend on the kind, extent and complexity of the firm and depend of the kind of services that are provided.

Besides, we are of the opinion that the mere fact that a firm has no arrangements/ procedures at all or just written on one page, does not mean that this firm is not compliant with the inducement rules and has received inappropriate commissions. The setting up of procedures and arrangements is and can only be a recommendation of the supervisory authority and is surely not an obligation. The infringement of the inducement rules still has to be proven and can and may not be deducted from the mere fact that there is no or little written inducement policy (arrangements and procedures). On the other hand, the mere fact that a firm has extensively written procedures and arrangements is not in itself the proof that there is no infringement of the inducement rules by the firm. The supervisor still has to look at what the firm has really received or has paid as a remuneration.

Question II: 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?

Again we partly agree with the view of CESR on the setting up of specific responsibilities and compliance controls. Everything depends on the complexity of the firm and the services it provides. For small investment firms and for intermediaries providing exclusively investment advice and receiving and passing orders , the setting up of specific responsibilities and compliance controls is not necessary and is a disproportionate heavy administrative burden.

The remuneration arrangements of intermediaries and the payments they receive/give are most of the time clear, easy and do not change every year. Intermediaries in the Netherlands fall under the scope of a lighter set of rules (not the full Mifid rules). Specific responsibilities and compliance controls do not fall under the scope of this lighter set of rules. These specific responsibilities and compliance controls are only usefull for bigger investment firms.

Question III : What are your comments about CESR's views that at least the general approach the investment firm is going to undertake regarding inducements should be approved by senior management? FIDIN agrees with CESR that the senior management should be involved in the inducement process.

Question IV: Do you agree with CESR's view that all kind 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? FIDIN agrees. (this does not apply to intermediaries who only give investment advice and/or receive and pass orders)

Question V: 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?

FIDIN agrees. (this does not apply to intermediaries who only give investment advice and/or receive and pass orders)

Question VI: Are there any specific examples you can provide of circumstances where a tax sales credit could be eligible for the proper fees regime? FIDIN cannot provide such examples.

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

Yes, FIDIN agrees with CESR's view to the extent that in our opinion the investment firm should make a clear proposal to the client about the services to be rendered and payments to be made when the services are delivered. If services appear to be of a one-of nature, full payment should follow immediately in accordance with the agreement between investment firm and client.

For this particular reason we strongly oppose the Dutch situation, where we have conflicting legislation. In accordance with the new Financial Services Act (WFT) an intermediary is not allowed to receive more than 50% of his total commission, even in the situation of a service of a one-of nature. The other 50% he may only receive during the remainder of the duration (up to and including 10 years) of the contract. It is obvious that this rule is in conflict with the inducement rules.

FIDIN appreciates CESR's attention to the following development in The Netherlands.

In its 2007 recommendations to "Inducements under MIFID " CESR considered in recommendation number 2 regarding article 26 (a) : "A separate, specific instruction issued by the client to the investment firm to receive or make a payment on his/her behalf will also be relevant. The fact that the economic cost of a fee, commission or non-monetary benefit is borne by the client is not alone sufficient for it to be considered within Article 26 (a) "

FIDIN agrees with CESR this instruction to be relevant. FIDIN takes the position that in case of a written contract fully agreed and signed between client and investment firm , in which the services to be rendered and the remuneration to be paid are fully understood and fully transparent, the parties involved are free to decide about the way the remuneration will actually be paid.

The Dutch supervisor AFM however, regarding the interpretation of article 26(a) interferes in the way parties are allowed to establish the actual payment. AFM states that such payment can only be made :

- As a payment by the client from his own financial means
- As a payment from a (higher) loan.

By taking this position AFM creates an obstacle for the parties to execute the actual payment in the way they wish. For instance through a payment using the policy system, either by a separate payment or by a temporary surcharge to the premium. AFM also by the formal requirement of a loan jeopardises the availability of a loan if the total amount would exceed the limit for obtaining the (mortgage-) loan as such in the first place.

Question VIII: 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 provides or received by an investment firm can give rise to? We agree, but again, we stress that one should consider the extent and complexity of the firm..

Question IX : What are your comments on CESR's view that product distribution and order handling services are two highly important instances where payments and non monetary benefits provided or received can give rise to very significant potential conflicts? Can you mention any other important instances where such potential conflicts also arise? No comments
When the payments are made transparent, we are of the opinion that the potential risk is no longer an issue.

Question X: 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. We do not agree with the view of CESR. This payment should be considered as a proper fee because the client has to pay it anyway. If he doesn't pay it, the service is not rendered at all.

Question XI : Do you have any comments on CESR's view of the summary disclosure rule under article 26(b)(i) of the Level 2 Directive (including when such a disclosure should be made)? No comments.

Question XII: What are your comments on CESR's view about detailed disclosures? No comments.

Question XIII: Do you have any comments on CESR's views on the use of bands?
No comments.

Question XIV: do you agree with CESR's views on the documentation through which disclosures are made ? FIDIN agrees.

Question XV :do you agree with CESR's views on the difference of treatment between retail and professional clients? Yes, FIDIN agrees.