

## **INVESCO RESPONSE TO CESR CONSULTATION PAPER ON INDUCEMENTS**

### **Answers to Consultation Questions:**

#### **General explanation and relationship with conflicts of interest**

**Q1: Do you agree with CESR that Article 26 applies to all and any fees, commissions and non-monetary benefits that are paid or provided to or by an investment firm in relation to the provision of an investment or ancillary service to a client?**

Yes, INVESCO agrees with CESR that Article 26 applies to all and any fees, commissions and non-monetary benefits that are paid or provided to or by an investment firm in relation to the provision of an investment or ancillary service to a client. However, we believe that there are some items which fall under these categories which are capable of being provided without creating a conflict of interest, even where these are not a “standard commission or fee” for a particular service. An example would be the provision of software and other analytical tools to be used in the provision of services to all clients.

**Q2: Do you agree with our analysis of the general operation of Article 26 of the MiFID Level 2 Implementing Directive and of its interaction with Article 21?**

Yes, INVESCO agrees with CESR’s analysis. However, we believe that further clarification is required around the regulatory responsibilities for cross-border activities.

#### **Article 26 (a): items “provided to or by the client”**

**Q3: Do you agree with CESR's view of the circumstances in which an item will be treated as a " fee, commission or non-monetary benefit paid or provided to or by ... a person acting on behalf of the client"?**

No, INVESCO disagrees with CESR’s restricted interpretation of Article 26(a). INVESCO believes that a wider interpretation is possible, specifically in circumstances where the client gives an explicit instruction that a payment be made on their behalf, subject of course to all other MiFID requirement being met.

**Q4: What, if any, other circumstances do you consider there are in which an item will be treated as a " fee, commission or non-monetary benefit paid or provided to or by the client or a person acting on behalf of the client"?**

None in addition to the circumstances noted in our answer to Question 3.

## **Article 26(b): condition on third party receipts and payments**

### **Q5: Do you have any comments on the CESR analysis of the conditions on third party receipts and payments?**

INVESCO strongly disagrees with the introduction of proportionality tests for the fee or commission to the market and to the value of the service provided to the client. Furthermore, we believe that CESR's interpretation goes beyond what MiFID requires/intended and that the introduction of such tests is likely to result in effective regulatory price controls/caps, increased legal uncertainty and be anti-competitive. It is our view that such tests will unfairly result in Asset Managers caught within the scope of MiFID being at a competitive disadvantage to other financial services firms who are out of scope. In addition, in our view, such tests would be almost impossible to apply consistently throughout the industry as it is only the client themselves who can truly determine the value of the service provided.

### **Q6: Do you have any comments on the factors that CESR considers relevant to the question whether or not an item will be treated as designed to enhance the quality of a service to the client and not impair the duty to act in the best interests of the client? Do you have any suggestions for further factors?**

We agree that the receipt of commission for unbiased advice should be regarded as designed to enhance the quality of service. We also agree that the payment or receipt of reasonable levels of commission does not give rise to a conflict of interest. However, we have serious concerns about the introduction of the concept of proportionality for such a payment and do not believe that such a test will be easy to apply in practice.

## **Article 26(b): disclosure**

### **Q7: Do you agree that it would not be useful for CESR to seek to develop guidance on the detailed content of the summary disclosures beyond stating that: such a summary disclosure must provide sufficient and adequate information to enable the investor to make an informed decision whether to proceed with the investment or ancillary service; and, that a generic disclosure which refers merely to the possibility that the firm might receive inducements will not be considered as enough?**

INVESCO accept CESR's contention that a bland generic disclosure is likely to be inadequate. However, we believe that it would be helpful if CESR were to develop some high-level guidance in this area. This should help to promote consistency.

An enhanced level of disclosure is only required for products and services within the scope of MiFID. CESR should be liaising with CEBS and CEIOPS to ensure that similar obligations apply to all relevant areas of the financial services industry (some of which already have less transparent charging structures) to ensure that the Asset Management industry is not put at a competitive disadvantage.

**Q8: Do you agree with CESR's approach that when a number of entities are involved in the distribution channel, Article 26 applies in relation to fees, commissions and non-monetary benefits that can influence or induce the intermediary that has the direct relationship with the client?**

INVESCO agrees with CESR that the disclosure to the final client should relate only to payments received or provided by the last intermediary in the chain, that is the firm providing the service to that client. Any other payments made along the distribution chain should be taken into account in the firm's management of conflicts of interest and be separately disclosed elsewhere, where necessary.

### **Tied Agents**

**Q9: Do you have any comments on CESR's analysis of how payments between an investment firm and a tied agent should be taken into account under Article 26 of the Level 2 Directive?**

INVESCO agrees with CESR's analysis. It is entirely logical that it is the higher amount of commission which is relevant to Article 26(2)(b) and should be disclosed.

**Q10: Are there any other issues in relation to Article 26 and tied agents that it would be helpful for CESR to consider?**

We have no comment on this.

**Q11: What will be the impact of Article 26 of the MiFID Level 2 Directive on current softing and bundling arrangements?**

Soft commissions received by investment firms should generally qualify as benefits provided to or by a third party and thus fall under Article 26(b).

In this connection we believe that establishing whether the benefit is "designed to enhance the quality of the...service" should not require a link to a specific service provided to the client, but rather a general enhancement of the quality of the overall service.

We also believe that the risk of overtrading and over-consumption of other services will be adequately dealt with by the investment firms' conflict of interest management.

**Q12: Would it be helpful for there to be a common supervisory approach across the EU to softing and bundling arrangements?**

INVERSCO believes that each local regulator is best placed to adopt an approach to supervision and implementation of the principles most appropriate to their particular jurisdiction. However, if a common approach is developed, we believe that this should be subject to separate, more detailed, consultation.

**Q13: Would it be helpful for CESR to develop that common approach?**

See our answer to Question 12 above.