

ABX

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CESR Consultation on Inducements under MiFID ref: CESR/06-687

Pioneer Investments welcomes the opportunity to respond to the CESR Consultation on “Inducements under MiFID” ref: CESR/06-687.

Pioneer Investments is the global asset management arm of the UniCredito Italiano Banking Group. Our group manages over Euro 270 Billion in assets from our global investment centres in Dublin, Boston and Singapore. We also have local investment centres in Budapest, Bucharest, Hamburg, Milan, Munich, Prague, Warsaw, Vienna and Zagreb. Our sales and distribution offices span the world and in Europe we distribute mutual funds and institutional investment services from our offices in Geneva, London, Madrid, Milan, Munich, Paris, Prague and Warsaw. Our product domicile of choice is Luxembourg and our Luxembourg Product ranges are distributed on a retail basis in over 20 countries worldwide.

General Comments

Rather than commenting specifically on the examples set out in the paper, this response will focus more generally on the approach adopted by CESR in drafting this paper having regard to the principles set out in Article 19 of the Directive and Article 26 of the Implementing Directive.

Over the last 15 years, market demand, competitive forces and regulatory requirements have polarised product manufacturers and distributors of investment funds. Although open architecture is still in its infancy in continental European retail markets, those that manage funds and those that distribute them, even when in the same group, compete for their share of profits. The sharing of revenues between manufacturers and distributors is often done in the form of retrocessions of management and distribution fees. This is a standard feature of the UCITS market.

Under Article 26 of the Implementing Directive, a fee paid to or received from a third party needs to meet three conditions, first it must be disclosed to the client prior to rendering the service, secondly it must be designed to enhance the service of the relevant service to the client and finally it should not impair compliance with the firm's duty to act in the best interests of the client. These three requirements are highly subjective. If supervisory convergence at CESR Level 3 fails, Pan-European fund promoters may have to comply with different requirements in different EU

markets governing how they remunerate distributors. This could then necessitate diverse marketing practices and result in reclosure of already open distribution systems. The single market for investment funds could be boosted or impeded depending on the success of supervisory convergence at Level 3. With these high stakes in mind the content of the paper is disappointing.

The term “inducements” is itself pejorative since it suggests that all payments falling under Article 26 necessarily influence the behaviour of the intermediary of the intermediary unless the contrary can be shown. We understand that this is the term utilised in the Directive but suggest that CESR does not carry it forward to Level 3. We question whether CESR’s conclusion that retrocessions qualify as inducements is coherent with the wording of the Implementing Directive which states that a standard fee or commission which is paid from a person other than the client and for a service provided to the client is not an inducement. It follows that standard commissions are not within the scope of Article 26. We believe that an example of these fees would be retrocessions received by distributors from our UCITS management companies in consideration, for example, for the distributor’s efforts to promote the fund and to provide customer assistance in the collection and transmission of orders. It follows that the payment of retroceded commissions is the standard and normal type of consideration for these activities: it is not an “inducement” and it does not fall within the scope of Article 21 of the Implementing Directive.

Pioneer Investments is surprised at the focus in the paper on collective investment schemes as products the distribution of which are susceptible to arrangements which may be prejudicial to the end investor. We would question CESR’s evidence for such activity and we would further question the complete lack of focus on other products and services typically distributed by MiFID regulated intermediaries.

This is especially the case given the ability in some member states for completely unregulated intermediaries to distribute UCITS without regard to CESR’s views on how they are remunerated. This risk is further compounded by the apparent unwillingness of the EU Commission to tackle this perceived issue across the insurance and investment banking industries.

We have serious concerns about the use by CESR of very specific examples in a consultation paper that will result in a recommendation to CESR’s members on how to interpret Article 19 of the Directive and Article 26 of the implementing Directive. We believe that there is a danger, despite a lack of any intention that this be the case, that these examples would be used by member state regulators as a basis for enforcement against firms coming under their supervision. We believe this cannot have been CESR’s intention and we would welcome clarification in any eventual recommendation on the exact intended utility of the eight examples contained in the paper.

We understand CESR regards this paper as an orientation paper as opposed to a clear statement of its intended future course on this matter. If this is the case, we again would object to the use of examples which focus on UCITS, a product type that has been subject to exhaustive scrutiny and regulation since 1985 and is one of the few product groups where promoters are obliged to disclose the total expenses involved in the management of the product they are buying. We fear that should the thrust or the

detail of the CESR paper find its way into a final recommendation to its members, it may result in a transfer of business from highly regulated UCITS into less regulated certificates and structured notes. We understand CESR's view in this regard is that such product types are "investment instruments" covered by the Directive and that CESR's final recommendation on best execution will introduce obligations for intermediaries who are paid a 'spread' as opposed to a fee in a manner that equates to the obligations set out in the paper under discussion. We would welcome confirmation from CESR that this will in fact be the case.

Introduction of the Concept of Proportionality

We are concerned at the introduction in some of the examples in the consultation paper of the requirement for proportionality in relation to payments received by distributors of mutual funds from the promoters of such funds. We believe that the introduction of this concept is not mandated by the requirements of Article 26 (b)(ii) of the Implementing Directive as it does not add to the question of whether such inducements are legitimate or not.

Determining whether or not a payment is proportionate to the service provided is, by definition, a highly subjective matter, suggests a requirement to measure the payment against market benchmarks which do not exist and which CESR does not attempt to define, and ultimately would result in unacceptable intervention by regulators in an area that today is completely driven by market forces.

We believe that the requirement that inducements must be designed "to enhance the quality of the services" puts the emphasis on the means used to provide such service rather than the result of the provision of such service. The CESR interpretation seems to focus on the end result rather than the quality of the service itself.

The introduction of the proportionality concept could result in potential civil liabilities on the part of either the fund promoter or the distributor in the case of differing interpretations of the proportionality of payment paid or received in respect of the service provided. We do not believe that this is what CESR intended.

Disclosure

We agree with CESR's contention that it would not be appropriate for it to issue guidance on the format of any disclosure required. However, we of course expect that an inconsistent approach by local regulators is something that CESR will actively guard against.

Softing and Bundling Arrangements

We refer you to EFAMA's comments in this regard which Pioneer Investments supports.

Pioneer Investments

9 February 2007