

22 December 2009

CESR  
11-13 avenue de Friedland  
Paris  
75008  
France

Dear Sirs,

**CESR Consultation Paper  
Inducements: Good and Poor Practices**

The IMA represents the UK-based investment management industry. Our Members include independent investment managers, the investment management arms of retail banks, life insurers and investment banks, and the in-house managers of occupational pension schemes. They are responsible for the management of nearly £3 trillion of funds, including authorised investment funds, institutional funds, private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (ie authorised unit trusts and open-ended investment companies).

It is in their capacity as providers of authorised funds that our Members have an interest in this consultation paper and the guidance offered by CESR on good and poor practices in compliance with the MiFID inducement rules.

CESR will be aware that current UK practices as regards the payment of commission and associated arrangements is likely to be affected by the outcome of the FSA's Retail Distribution Review. An intended outcome of that review is that providers will no longer be allowed to influence the level of commission paid to distributors. It remains to be seen how that will impact upon the UK authorised funds industry but it is against that background that our responses are offered.

We generally agree with CESR's views following its review of industry practices and welcome the provision of what CESR regards as good and poor practices, which will enable firms to benchmark their own activities.

The attached provides responses to each of the questions posed by CESR. We would be happy to discuss this submission, and any matters arising, with you.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andy Maysey", with a long horizontal flourish extending to the right.

**Andy Maysey**  
**Senior Adviser – Retail Distribution**

## **Inducements: Good and poor practices**

### **Classifying payments and non-monetary benefits and setting up an organisation to be compliant:**

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

CESR's conclusions seem reasonable. However, any system set up by an investment firm to review payments should be proportionate to the business concerned. The good practice examples provided by CESR refer to an assessment of each type of payment or benefit to be carried out before it is provided. This is an ideal that may not be economically deliverable in practice. Firms should be able to devise processes that are capable of identifying such payments on a risk assessed basis so as to use resources efficiently. Certainly, individual payments or benefits should not all be required to be assessed beforehand.

**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?

We have no comments on CESR's views.

**Question III:** What are your comments about CESR's view that at least the general approach the investment firm is going to undertake regarding inducements (its 'inducements policy') should be approved by senior management?

This seems entirely sensible, although we question whether there is any necessity for a specific "inducements policy". This could be incorporated into a firm's general conflict of interests policy, for example.

### **Proper fees:**

**Question IV:** Do you agree with CESR's view that all kinds 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 (under the general category of settlement and exchange fees)?

We agree with this view.

**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?

We agree with this view.

**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?

We have no specific examples but note that such credits should be monitored under the firm's conflict of interest policy.

**Payments and non-monetary benefits authorised subject to certain cumulative conditions – acting in the best interests of the client and designed to enhance the quality of the service provided to the client:**

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

In the area of fund distribution it has long been the case that the payment of trail commission retrocession is regarded as a mechanism that limits or prevents unnecessary transactions or churning on the part of advisers.

In the UK the FSA, in its Retail Distribution Review, has proposed that there should be a functional link between ongoing payments and any ongoing service provided by the distributor. It remains to be seen how this will manifest itself in the authorised funds sector in the UK.

However, with increased transparency of products and charges, and a growing consumer awareness, we would agree that the receipt of ongoing payments for limited or no further service from the distributor is difficult to justify and could lead to consumer detriment.

**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 provided or received by an investment firm can give rise to?

We agree with CESR's view.

**Question IX:** What are your comments on CESR's view that product distribution and order handling services (see §74) are two highly important instances where payments and non-monetary benefits received give rise to very significant potential conflicts? Can you mention any other important instances where such potential conflicts also arise?

We agree that these instances could give rise to potential conflicts. However, if appropriate monitoring arrangements are put in place payments can be evaluated on the merits of each of the circumstances.

**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 agree with CESR's view.

**Payments and non-monetary benefits authorised subject to certain cumulative conditions – Disclosure:**

**Question XI:** Do you have any comments on CESR's views about summary disclosures (including when they should be made)?

We agree with CESR's view and have no comments to make.

**Question XII:** What are your comments on CESR's views about detailed disclosures?

We agree with CESR's views.

**Question XIII:** Do you have any comments on CESR's views on the use of bands?

We fully support CESR's goal that the information provided should enable clients to make an informed decision. To that end we agree with the use of bands, provided they are meaningful and not misleading.

**Question XIV:** Do you agree with CESR's views on the documentation through which disclosures are made?

As referred to in the CP, Article 26(b)(i) of the Directive does not prescribe how the information should be provided. Therefore we agree that there should not be a single required approach for disclosure documentation so that different client types, client relationships and types of client communication can be taken into account, provided, of course, that the disclosure is clear, fair and not misleading.

**Question XV:** Do you agree with CESR's views on the difference of treatment between retail and professional clients?

We agree that professional clients have different information requirements from retail clients and that it is legitimate to take this into account in drafting summary and detailed disclosure documentation.