

MEMO# 27897

February 18, 2014

Draft Comment Letter on FCA Dealing Commission Consultation - Comments Due February 21

[27897]

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TO: SEC RULES COMMITTEE No. 5-14
EQUITY MARKETS ADVISORY COMMITTEE No. 2-14
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 3-14
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 4-14
INTERNATIONAL COMMITTEE No. 3-14 RE: DRAFT COMMENT LETTER ON FCA DEALING COMMISSION CONSULTATION - COMMENTS DUE FEBRUARY 21

As we previously informed you, on November 25, 2013, the UK Financial Conduct Authority (the "FCA") published a consultation paper on dealing commission rules (the "CP"). [\[1\]](#) The FCA proposes to (i) prohibit the use of dealing commission to purchase "corporate access," (ii) revise the criteria for determining the characteristics of exempt research, ultimately creating a more objective standard, and (iii) require disaggregation for services where substantive research is provided alongside another good or service that is not permitted to be paid for through the use of dealing commission. The CP also seeks feedback regarding the potential for wider reforms to the dealing commission regime. The deadline for responding to the CP is February 25, 2014.

ICI and ICI Global will submit a joint letter expressing our concerns with the proposed changes and views on wider dealing commission reform. Attached please find a draft of the comment letter (which was also sent by email on February 17). We welcome your feedback by Friday, February 21st. You may reach Eva Mykolenko by phone at 202-326-5837 or email at emykolenko@ici.org.

Described below are the main points expressed in the comment letter.

Using Dealing Commission to Pay for Corporate Access

In the letter, we state that the proposed treatment of corporate access could have a significant impact on investment managers' operations and urge the FCA to balance our concerns described in the letter with its objectives. Specifically, we request that the FCA explicitly recognize that investment managers may receive corporate access incidentally (and not directly pay for it) and that such situations would fall outside of the corporate

access prohibition. We urge the FCA to specify the disclosure that must be made or the conditions that must be met, if any, in order for investment managers to make this determination.

We also raise the concern that small and medium investment managers, due to their size and stature, may be less able to independently arrange meetings with issuers without an intermediary. Because of the uncertainty of the impact of the proposed change on these firms, we urge the FCA to undertake further analysis of this issue to ensure that they do not inadvertently disadvantage a category of investment managers.

Changes to Definition and Interpretation of Research

With respect to the proposed changes to the definition and interpretation of what is considered research, we explain that, while we support the FCA's desire to have investment managers more closely scrutinize and consider what goods and services may be considered eligible research, the proposed revisions creating a more subjective standard raise concerns regarding how the new rules may be interpreted and implemented. We request that, if the FCA believes that certain additional items should not be treated as exempt research, the FCA should explicitly include these items in the list of items that are not exempt.

We also raise the concern that determining whether each piece of research received by a firm meets the four criteria required for an item to be considered "substantive research" will create compliance burdens and lead to a less efficient use of a manager's resources. We therefore urge the FCA to further analyze the costs that will be incurred by investment managers to comply with the proposed changes.

Cross-Border Issues

We state in the letter that, given the global nature of our members' businesses, the proposed changes raise several concerns regarding the impact on cross-border trading and raise the need for regulatory consistency in this area. Notably, the proposed changes would make it difficult for investment managers to maintain integrated research and trading operations. We explain that we are further concerned about whether the FCA's interpretation of the goods and services that are considered "substantive research" will be different from what is considered eligible research in other jurisdictions. As the FCA considers the proposed changes and any further work, we urge it to work collaboratively with regulators from around the globe and to refrain from undertaking wider reforms unilaterally.

Necessity of Sell-Side Engagement

We explain in the letter that investment managers do not practically have the ability to change how the dealing commission regime operates and state that the FCA should not move forward with proposals unless and until it also requires the sell-side to provide the necessary information to investment managers to facilitate compliance with the FCA's requirements.

Need for Sufficient Time to Implement Changes

The FCA states in the CP that the proposed changes clarify its rules and do not prohibit additional activities that are currently permitted. We stress that the FCA's changes are more than clarification to the existing rules and urge the FCA to provide ample time for investment managers to comply with any new requirements or FCA positions.

Considerations with Respect to Wider Reforms

Regarding the potential for wider reforms to the dealing commission regime, we note that the consequences could differ greatly depending on regulatory and market reactions to any changes, and that individual firms could be affected very differently based on their size, scope of business, and nature of their clients. We explain in the letter that the existing dealing commission regime has a number of benefits that may be impacted by a change. Given the potential consequences of wider reform, prior to taking further action in this area, we recommend that the FCA issue a consultation seeking feedback on further changes.

Eva M. Mykolenko
Associate Counsel - International Affairs

[Attachment](#)

endnotes

[1] The FCA consultation paper (CP13/17) is available at:
<http://www.fca.org.uk/static/documents/consultation-papers/cp13-17.pdf>.

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