

**MEMO# 20863**

February 13, 2007

# **ICI Comment Letter to the Committee of European Securities Regulators on Inducements Under MiFID**

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TO: INTERNATIONAL MEMBERS No. 4-07  
EQUITY MARKETS ADVISORY COMMITTEE No. 7-07  
INVESTMENT ADVISER MEMBERS No. 4-07  
SEC RULES MEMBERS No. 19-07 RE: ICI COMMENT LETTER TO THE COMMITTEE OF  
EUROPEAN SECURITIES REGULATORS ON INDUCEMENTS UNDER MIFID

The Institute submitted the attached comment letter to the Committee of European Securities Regulators (CESR) on February 9, 2007. [\[1\]](#) The letter responds to CESR's public consultation on the treatment of "inducements" provided to or by investment firms under the Markets in Financial Instruments Directive (MiFID). [\[2\]](#)

Article 19(1) of MiFID requires that an investment firm act honestly, fairly, and professionally in accordance with the best interests of its clients. This provision is further elaborated in Article 26 of the MiFID Level 2 Implementing Directive, which sets out requirements in relation to the receipt or payment by an investment firm of a fee, commission, or non-monetary benefit.

CESR's consultation paper provided a general explanation of Article 26 and discussed the conditions that must be satisfied for fees, commissions, and other benefits to be allowed under Article 26. The consultation paper also specifically addressed soft commission and bundled brokerage arrangements and requested input on the effect of Article 26 on these

arrangements and opinions on whether it would be helpful for CESR to develop a common regulatory approach in this area.

CESR included statements in the consultation paper that suggested a presumption that soft commission and bundled brokerage arrangements contain inherent and insurmountable conflicts of interest. In response, the Institute's letter urges CESR to recognize that soft commission and bundled brokerage arrangements can be effectively managed and that continuing to allow investment managers the flexibility to use these arrangements is consistent with the requirements of Article 26. The letter provides a qualified endorsement of a common supervisory approach with respect to regulations that limit the types of services that can be obtained with soft commissions. The letter also expresses concern about any approach that would require investment managers to provide "unbundled" disclosure of bundled commissions and urges CESR to not to adopt that approach.

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[Attachment \(in .pdf format\)](#)

#### **endnotes**

[1] CESR is an independent committee European securities regulators with one voting member from each member state of the European Union. CESR's role is to (i) improve coordination among European securities regulators , (ii) act as an advisory group to assist the European Commission, and (iii) work to ensure more consistent and timely implementation of community legislation in the EU member states.

[2] CESR/06-687 (Dec. 2006), available at <http://www.cesr-eu.org/popup2.php?id=4085>.