

MEMO# 21068

April 18, 2007

CESR Issues Second Consultation Paper on Inducements under MiFID

[21068]

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TO: INTERNATIONAL MEMBERS No. 9-07
EQUITY MARKETS ADVISORY COMMITTEE No. 23-07 RE: CESR ISSUES SECOND
CONSULTATION PAPER ON INDUCEMENTS UNDER MIFID

On April 13, 2007, the Committee of European Securities Regulators (CESR) issued a second consultation paper on the treatment of inducements under the Markets in Financial Instruments Directive (MiFID). [\[1\]](#) The consultation requests comment on six draft recommendations to CESR members on how to implement Article 26 of the MiFID Level 2 Implementing Directive. [\[2\]](#) The consultation period lasts only two weeks, with comments due to CESR by April 27, 2007.

In its original consultation paper on Inducements under MiFID, published in December 2006, CESR explained that it was considering issuing recommendations to its members to encourage supervisory convergence and consistent implementation of Article 26. CESR developed the six draft recommendations after considering responses to the original consultation. The second consultation paper also contains a number of additional examples intended to help assess whether certain types of fees, commissions, and/or non-monetary benefits would be permissible under Article 26. CESR plans to consider responses and publish final recommendations by the end of May 2007.

Among other things, the original December consultation discussed soft commission and bundled brokerage arrangements and requested input on the effect of Article 26 on those arrangements and opinions on whether it would be helpful for CESR to develop a common

regulatory approach in the area. The Institute's comment letter offered 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. [3] The letter also urged CESR not to adopt an approach that would require investment managers to provide "unbundled" disclosure of bundled commissions. CESR's new draft recommendations do not directly address soft commissions and bundled brokerage.

The Institute does not plan to file additional comments with CESR. If you have questions on CESR's draft recommendations or other aspects of the second consultation, please contact me at gguymon@ici.org or 202.326.5837.

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endnotes

[1] CESR/07-228 (Apr. 2007), available at <http://www.cesr-eu.org/popup2.php?id=4473>.

[2] Article 26 sets out requirements in relation to the receipt or payment by an investment firm of a fee, commission, or non-monetary benefit.

[3] See Letter from Bob Grohowski, Senior Counsel, Investment Company Institute, to Mr. Fabrice Demarigny, Committee of European Securities Regulators, dated Feb. 9, 2007 (CESR/06-687), available at http://www.ici.org/policy/comments/07_cesr_mifid_com.

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