

MEMO# 31888

August 5, 2019

ICI to Hold Member Call to Discuss ESMA Call for Evidence on the Impact of Inducements and Costs and Charges Disclosure Requirements Under MiFID II

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August 5, 2019 TO: Equity Markets Advisory Committee

ICI Global Regulated Funds Committee

ICI Global Trading & Markets Committee RE: ICI to Hold Member Call to Discuss ESMA Call for Evidence on the Impact of Inducements and Costs and Charges Disclosure Requirements Under MiFID II

The European Securities and Markets Authority (ESMA) recently issued a call for evidence on the impact of the inducements and costs and charges disclosure requirements under the Markets in Financial Instruments Directive (MiFID) II.^[1] ESMA will accept comments on the call for evidence until 6 September 2019.

ICI will hold a member call to discuss the call for evidence on Friday, 9 August at 11:00 a.m. (ET). Please contact Monique Curtis at monique.curtis@ici.org to receive dial-in information for the call. We are particularly interested to hear member feedback on how the MiFID II provisions that are the subject of the call for evidence are affecting investment research.

The call for evidence seeks input on 18 questions (reproduced below) on the following two topics: (1) MiFID II disclosure requirements for inducements permitted under Article 24(9) of MiFID II; and (2) costs and charges disclosure requirements under Article 24(4) for MiFID II. The call for evidence also provides legal background on MiFID II's regulation of inducements and disclosures concerning costs and charges.

ESMA intends to use the feedback it receives on the consultation to inform a report on these topics that it will submit to the European Parliament and the Council early next year. The report will consider, among other things, the impact of the requirement to disclose any fees, commissions, and non-monetary benefits in connection with the provision of an investment service or an ancillary service, and how firms are complying with these requirements in practice and how the application of the requirements varies across member states.

Questions in the call for evidence

The call for evidence requests input on the following questions:

Questions on MiFID II disclosure requirements for inducements permitted under Article 24(9) of MiFID II

QA: What are the issues (if any) that you are encountering when applying the MiFID II disclosure requirements in relation to inducements? What would you change and why?

QB: Do you use the ex-ante and ex-post costs and charges disclosures as a way to also comply with the inducements disclosure requirements? At which level do you disclose inducements: instrument by instrument, investment service or another level (please specify how)?

QC: Have you amended your products offer as a result of the new MiFID II disclosure rules on inducements? Please explain.

QD: Has the disclosure regime on inducements had any role/impact in your decision to provide independent investment advice or not?

QE: How do you apply ex-ante and ex-post disclosures obligations under Article 24 (9) of MiFID II in case of investment services provided on a cross-border basis? Do you encounter any specific difficulty to comply with these requirements in a cross-border context? Please explain.

QF: If you have experience of the inducement disclosure requirements across several jurisdictions, (e.g. a firm operating in different jurisdictions), do you see a difference in how the disclosure requirements under Article 24(9) of MiFID II and Article 11(5) of the MiFID II Delegated Directive are applied in different jurisdictions?

QG: Would you suggest changes to the disclosure regime on inducements so that investors or potential investors, especially retail ones, are better informed about possible conflicts between their interests and those of their investment service provider due to the MiFID II disclosure requirements in relation to inducements?

QH: What impact do you consider that the MiFID II disclosure requirements in relation to inducements have had on how investors choose their service provider and/or the investment or ancillary services they use (for instance, between independent investment advice and nonindependent investment advice)?

Questions on costs and charges disclosure requirements under Article 24(4) for MiFID II

QI: What are the issues that you are encountering when applying the MiFID II costs disclosure requirements to professional clients and eligible counterparties, if any? Please explain why. Please describe and explain any one-off or ongoing costs or benefits.

QJ: What would you change to the cost disclosure requirements applicable to professional clients and eligible counterparties? For instance, would you allow more flexibility to disapply certain of the costs and charges requirements to such categories of clients? Would you give investment firms' clients the option to switch off the cost disclosure requirements completely or apply a different regime? Would you distinguish between per se professional clients and those treated as professional clients under Section II of Annex II of MiFID II?

Would you rather align the costs and charges disclosure regime for professional clients and eligible counterparties to the one for retails? Please give detailed answers.

QK: Do you rely on PRIIPS KIDs and/or UCITS KIIDs for your MiFID II costs disclosures? If not, why? Do you see more possible synergies between the MiFID II regime and the PRIIPS KID and UCITS KIID regimes? Please provide any qualitative and/or quantitative information you may have.

QL: If you have experience of the MiFID II costs disclosure requirements across several jurisdictions, (e.g. a firm operating in different jurisdictions), do you see a difference in how the costs disclosure requirements are applied in different jurisdictions? In such case, do you see such differences as an obstacle to comparability between products and firms? Please explain your reasons.

QM: Do you think that MiFID II should provide more detailed rules governing the timing, format and presentation of the ex-ante and ex-post disclosures (including the illustration showing the cumulative impact of costs on return)? Please explain why. What would you change?

QN: For ex-ante illustrations of the impact of costs on return, which methodology are you using to simulate returns? Or are you using assumptions (if so, how are you choosing the return figures displayed in the disclosures)? Do you provide an illustration without any return figure?

QO: For ex-post illustrations of the impact of costs on return, which methodology are you using to calculate returns on an ex-post basis (if you are making any calculations)? Do you use assumptions or do you provide an illustration without any return figure?

QP: Do you think that the application of the MiFID II rules governing the timing of the ex-ante costs disclosure requirements should be further clarified in relation to telephone trading? What would you change?

QQ: Do you think that the application of Article 50(10) of the MiFID II Delegated Regulation (illustration showing the cumulative impact of costs on return) helps clients further understand the overall costs and their effect on the return of their investment? Which format/presentation do you think the most appropriate to foster clients' understanding in this respect (graph/table, period covered by the illustration, assumed return (on an ex-ante basis), others)?

QR: Are there any other aspects of the MiFID II costs disclosure requirements that you believe would need to be amended or further clarified? How? Please explain why.

George M. Gilbert
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endnotes

[1] See Call for evidence: Impact of the inducements and costs and charges disclosure requirements under MiFID II (17 July 2019), *available at* https://www.esma.europa.eu/sites/default/files/library/call_for_evidence_impact_of_the_inducements_and_costs_and_charges_disclosure_requirements_under_mifid_ii_0.pdf.

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