

TB/27-007

BEAMA/Febelfin's response to CESR's Public Consultation on Inducements under MiFID (CESR/06-687)

Introduction

The first part of this response to the consultation document consists of a list of seven general principles as an illustration of the position and concerns of the sector.

The second part gives a description of the specific situation of asset management in Belgium. This chapter states that the current company model and the benefits existing within this model comply with the MiFID provisions concerning inducements.

I) General principles

(a) Priority given to UCITS in case of CIS investment services

As for inducements, we also want to draw the attention on the strict distinction between the scope of the MiFID Directive on the one hand and that of the UCITS Directive on the other hand.

The regulation governing inducements within the framework of investment in CIS, as for authorisation as well as for transparency and disclosure, has been adequately laid down in the UCITS Directive itself and in the Belgian law into which the latter has been transposed.

(b) Potential conflicts of interest as a criterion

Inducements must be assessed on the basis of the possibility of causing conflicts of interest they can imply. This does not mean that the mere presence of inducements inevitably will cause a conflict of interest. The provisions laid down in article 26 must apply only to those categories of inducements which may cause conflicts of interest.

There is no risk of seeing conflicts of interest arise in the case of a service provided under the system of 'execution only' (e.g. selling UCITS in some cases) and consequently, article 26 does not apply to this specific case.

(c) Consequences as for the development of Open Architecture

The development of third party CIS distribution will be seriously affected by unjustified restrictions on a number of inducements (e.g. fund manager fees paid to the distributor).

There will be no danger for the interest of the customer to be impaired, if the selection of CIS offered, the investment advice to the client and the negotiations with fund managers about fees are carried out independently.

(d) No legal basis for the principle of proportionality

The principle of proportionality has not been drawn from Level I or Level II provisions.

Within the framework of a sound market, it is inconceivable to have a situation in which the national supervisor would have the authority to lay down the level of the benefits a firm may receive or offer. The level of benefits is a matter which should depend on the companies' commercial policy in combination with an adequate level of transparency for the customers.

(e) Level Playing Field with other similar products

One should avoid a further distortion of the level playing field with products which are kept out of the scope of MiFID (e.g. unit-linked insurance products, structured notes) as a result of the different regulations governing inducements.

(f) Disclosure

Disclosure should be sufficiently generic. Disclosure which is far too detailed, is disadvantageous for the customer due to the increase of costs: detailed information for instance will cause an upward effect and this will lower the profitability for the customer.

(g) Soft commissions

Canceling soft commissions is contrary to the interest of the customer. If the asset manager must pay the expenses for research, this can only lead to an increase of the management fee. The transaction costs by contrast will be lower. However, chances are high that the customer will have to pay more in the end, for management fees indeed are applied continuously, whereas transaction costs occur only as a result of market movements.

II) Belgian Case

(a) Rich variety of investment firms in the Belgian asset management industry

The rich variety of investment firms in terms of size, organisation and legal status is typical for the Belgian asset management market. On the one hand, there are big and medium-sized financial institutions in which one single group may take care of discretionary asset management, investment advice, custody, fund distribution and fund management. On the other hand, there are many small and very small asset managers and investment advisers who offer only one specific type of investment service and who rely on other institutions for all other types of related services.

One should avoid creating a situation in which the regulation on inducements unjustifiedly affects one category of schemes more than another. One should also avoid that the ban on some types of benefits will have negative consequences for the customer, such as higher costs being directly charged to the customer, a drawback in service offering or a restricted choice between independent asset managers.

Fees and commissions also have a stabilising effect on the portfolio: canceling certain commissions may tempt some distributors to arbitrate portfolios so as to cash in on front-end fees.

(b) The Belgian organisation model

Below is a list of key elements underlying the current way of working of Belgian asset managers:

- the client agrees beforehand with the best-execution policy and is informed of the asset manager's conflict of interest policy,
- the client will be informed beforehand of the customary remunerations and fees an asset manager may receive, with an indication as for their amount or their method of calculation,
- the asset manager ensures the follow-up and selects a vast range of funds in the best interest of the client (funds are used to a large extent in portfolio management),
- the asset manager receives a fee from the fund managers, but this fee has no influence on the selection process,
- the fees mentioned above do not result in higher costs for the client and neither do they affect the asset manager's independence nor the quality of service providing,
- the fees mentioned above are used to a large extent for improving the services offered to the clients,
- within the framework of periodical reporting, the client will be given an overview of the fees he has paid.

The client is informed beforehand of these key elements of the company organisation as part of the best execution policy and conflicts of interest policy.

(c) Conclusion

We assume that the model as mentioned above can be maintained under MiFID and that it is different from that which is defined in the 8th example mentioned in § 25 of the consultation document.

The requirements laid down in article 26 can be fully met, provided there is adequate disclosure/transparency and information for the client about the conflicts of interest policy or the best execution policy agreed upon, in order to make sure that the obligation for the company to act in the best interest of the client will be met. Some types of inducements should be allowed, if both parties, having been duly informed, agree upon and accept this possibility (e.g. in the contract).



Febelfin – the Belgian Finance Federation – was founded on 28 March 2003 by five constituent associations: the Belgian Bankers' and Stockbroking Firms' Association (ABBBVB); the Belgian Asset Managers Association (BEAMA); the Professional Union of Credit Providers (PUCP); the Belgian Association of Stock Exchange Members (BASEM); and the Belgian Leasing Association (BLA). By the end of October 2005, the total number of Febelfin members amounted to more than 230, including Euronext, Banksys and Isabel.

This kind of regrouping of associations within a single Federation is unique in the European Union. Febelfin is the leading representative body of the Belgian world of finance at a national and international level. At Febelfin we are committed to an open and constructive dialogue with political authorities, regulators and key stakeholders, in the interest of a sustainable development of the activities for and by our members.

BEAMA – the Belgian Asset Managers Association – is the professional association of the Belgian fund and asset managers. BEAMA has 52 members, representing €450 billion in assets under management at end 2005. BEAMA aims at promoting and developing asset management in Belgium as well as at defending the professional and moral interests of its members. Asset management includes among other things ensuring the promotion, management, distribution and administrative processing of CIS, as well as portfolio management for institutional and private clients and investment advice. Within the context of this purpose, BEAMA represents its members towards the public authorities and the competent institutions at the Belgian, international and supranational level.

BEAMA is member of Febelfin, the Belgian Financial Sector Federation