

At the beginning we would like to ask if and when ESMA intends to provide market participants with Q&A on inducements (MiFID II)?

With regard to the above we would like to propose few questions to future Q&As on inducements.

1. Art. 11 paragraph 2 Commission Delegated Directive supplementing Directive 2014/65/EU (hereinafter “Delegated Directive”) – what it means that “service is proportional to the level of inducements received” and how investment firm should demonstrate that provision of additional service is proportional to the level of received inducements?
2. Whether on the basis of the Art. 11 paragraph 2 Delegated Directive investment firm may deem that to fulfil the condition of proportionality sufficient will be actually provision of qualified service as indicated in Art. 11 p. 2 Delegated Directive regardless of the costs incurred by the investment firm in relation to provision of such service? Whether the cost incurred once only, related to launch of additional service in order to fulfil the condition of proportionality as indicated in Art. 11 p. 2 Delegated Directive, may be distributed in time adequately to predictable period of provision such additional service? E.g. implementation of system used to run an additional service associated with one-time expense in the amount of EUR 1 million. At the same time investment firm receives inducements in the amount of EUR 100 thousand per year. Whether estimation of time for provision of this additional service to clients (e.g. 10 years) taking into account the needs of quality improvement costs in proportion to that period (in this case EUR 1 million: 10 years = EUR 100 thousand per year) may be consider as admissible action of investment firm? Is such a procedure will allow investment firm to prove that the provision of additional services is proportional to received inducements?
3. In our opinion, the requirement of individual inform clients about received inducements by the investment firm as referred to in Article. 11 paragraph. 5 c) Delegated Directive means that every client should receive such information but the information does not need to contain a breakdown of the costs allocated to individual clients, but only presents costs incurred on a group of clients to whom the service connected with received benefits is provided.
4. In view of Art. 11 paragraph 4 Delegated Directive please let us know what are the examples of ways in which investment firm has to prove that remunerations, commissions and non-monetary benefits paid or received by investment firm, or these which investment firm intends to use, improve the quality of services provided to the respective clients.
5. Art. 11 paragraph 2a iii Delegated Directive: whether in the case when for one client variety of services are provided, received inducement under one of such services can be used to improve the quality (through the provision of additional or higher level service) of other service provided to the same client if the services are not related to each other? E.g. the other service (that the quality is being improved) is not additional or higher level service in relative to first/basic service (in which the inducement is received).
6. Is an investment firm that meets the requirements of Article 11 Delegated Directive in particular provides the service of reception and transmission of orders in the manner referred to in paragraph 2 a) iii), in the context of justification for receiving inducements from the Investment Funds / management companies (in the form of participation in the handling fee and the fee for the management of the purchased shares in collective investment) may rank the following expenses related to:

- employment costs of contributing to providing a wide range or the provision of advisory services, preparing analyses or recommendations;
 - the provision of value-added tools such as objective information tools helping client making investment decisions or allowing client monitoring, modelling and adapting the scope of financial instruments which are the subject of client's investments or the provision of periodic reports on the results and costs and charges related to financial instruments, e.g. costs associated with implementation and maintenance of tool that enables in easy way finding information about various types of investment funds, such as rates, key information, tables of fees, investment policy, information about the management, assets size, rankings, etc. .
 - trainings for clients and employees organized by investment firm.
7. Where the investment firm provides to client investment service of the reception and transmission of orders, and at the same time provides the client marketing materials prepared and received from the investment fund management company, may charge additional fees from such investment fund? Or it is qualified as prohibited inducements?
 8. Where the investment firm provides to client the investment service of the reception and transmission of orders, and at the same time provides the client self-developed marketing materials in relation also to investment fund management company, may an investment firm charge additional fees from such an investment fund? Or it is qualified as prohibited inducements?
 9. We would like to confirm that placing by the investment firm (distributor of units) in advertising materials prepared by investment fund management company, the name of that investment firm is a permissible inducement?
 10. Where the distribution of financial instruments (e.g. units of investment fund management company) requires changes to the information system of investment firm (distributor of units) may the receiving of reimbursement of the cost of adjusting such information system, by the investment firm from investment fund management company be treated as permissible inducement?
 11. Where adjustment of investment firm own processes, including in particular information system is required to allow investment fund management company comply with the law (e.g. FATCA, AML) may the receiving of reimbursement of the cost of such adjustment by investment firm from investment fund management company be treated as permissible inducement?
 12. Is an investment firm entitled to receive an inducement from Mutual Fund for enhancing services quality, even if not all of its clients utilize new facilities provided?

1 It is worth pointing out that according to Czech National Bank acting as a supervisory authority of the financial market in the Czech Republic, making an investment firm offer easier and more accessible for customers may be considered as enhancing the quality of the relevant service to the client. As a result, an inducement related to such actions can be received by a distributor. Taking into consideration that MiFID II provisions referring to inducements (vs. MiFID) are not subject to major changes, such interpretation seems to be justified.

„Za zlepšování kvality poskytované služby přitom může být při přijímání a předávání pokynů v rámci distribučního řetězce považována i skutečnost, že je zajištěna snazší dostupnost produktů pro zákazníka. Konstrukce odměny však nesmí být v rozporu s povinností jednat v nejlepším zájmu

zákazníka, což je případ odměny konstruované např. formou bonusu, tedy pokud by investiční zprostředkovatel obdržel od obchodníka s cennými papíry jednorázový bonus za prodej sjednaného množství určitého investičního nástroje.”

“The fact that a client is provided with easier access to a product, may also be considered as an enhancement of service quality whilst accepting and transferring orders within the framework of distribution chain. Nevertheless, an inducement mechanism must not be in conflict with the requirement of acting in the best interest of the client, which is for example a case of bonus-type inducement, i.e. when a distributor would receive a one-time bonus for selling agreed number of specific investment instrument.”

https://www.cnb.cz/cs/faq/pripustnost_pobidek_dle_MiFID_ve_vztahu_k_iz.html