

ASSET MANAGEMENT AND INVESTORS COUNCIL

Adam Wreglesworth
Wholesale Conduct Policy & Client Assets
Markets Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

London, February 25, 2014

Dear Mr Wreglesworth,

Response to FCA Consultation CP13/17

The ICMA Asset Management and Investors Council ('AMIC') was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

The AMIC composition embraces the diversification and the current dynamics of the industry – representing the full array of buy side interests both by type and geography. The AMIC's focus is on issues which are of concern to its broad membership, rather than having a specific product focus.

The members of the AMIC welcome the opportunity to discuss the FCA consultation paper on the use of dealing commission rules. The AMIC understands that the consultation paper is part of the FCA's wider asset management strategy, which focuses on ensuring investment managers, acting as agents on behalf of their clients, put the customer's best interest first. Transaction cost reduction is one aspect but others like security of transactions or operational risk reduction should not be overlooked. Our members acknowledge the importance of ensuring that clients can be confident that managers are acting in their best interest when they produce or purchase research, and support rules changes that are designed to enhance investor protection and market integrity.

AMIC members have the following general points to highlight.

- The international dimension of the change of rules in the UK, and global level playing field: The proposed rules changes provide a level playing field to asset managers operating solely within the UK. However UK-based international managers operating sub-advisory arrangements internationally will be left at a regulatory disadvantage in other markets.
- Incremental cost of compliance: The introduction of a more prescriptive analysis of eligible research will result in additional administrative costs by virtue of

demonstrating compliance with the four, cumulative, evidential tests for every piece of commissionable research. The costs associated with the changes proposed in this consultation are not considered in paras. 8 and 9 of Annex 1.

- Corporate access: AMIC members do not oppose per se the proposed ban on corporate access being paid for with dealing commissions; however, the main concerns relate to how this ban manifests itself in an international context and its impact on smaller asset managers.

These three points are considered in the detailed response below.

Rules changes and further clarity

The changes to COBS 11.6.5E(1)(d) have been amended to clarify the existing rules and enhance investors protection and market integrity, providing greater objectivity for analysing research eligibility. Whilst it is clear that the new regime will be stricter following the failure to meet the criteria set in 11.6.5E(1), the changes do not provide enough clarity on how to ensure compliance with the new standards. Investment managers should remain able to disagree with the conclusions of substantive research when making decisions about customers' portfolios.

The changes to COBS 11.6.5E(1) will undoubtedly change the dynamics of procuring research. The need to demonstrate that services or goods satisfy all four of the evidential tests which largely rely on subjective appreciation will also increase the cost of inquiry in relation to any service offering from a full-service broker as well as ongoing compliance costs.

In the face of the proposed changes, AMIC members hope that the sell-side will develop a richer, relevant and more consistently identifiable classification of research and advisory services. This would permit asset managers, especially those running smaller funds and mandates, to more cheaply identify if any good or service met the requirements of 11.6.5E(1)(a) to (d).

Corporate access

AMIC members do not oppose the proposed ban on Corporate Access being paid for with dealing commissions. Corporate Access should not be seen as a favour and AMIC members have direct contacts with most companies, as it should be part of a company's communication strategy to grant access to shareholders. However, some concerns relate to how this ban manifests itself in an international context and its impact on smaller asset managers.

The specific exclusion of Corporate Access, as proposed in 11.6.8(4A) creates a number of challenges. 11.6.8A G(2) (as proposed) states that the asset manager should disaggregate any good or service that comprises the provision of substantive research from those that do not. However, this approach assumes the availability of priced services, whereas Corporate Access may also be one component of a larger, unpriced charge, which makes it difficult to 'carve out' disallowed research.

We are also concerned with the potential impact this ban will have on smaller asset managers access to companies. A system where companies choose who they see and who they will allow access – without asset managers funding corporate access themselves – may lead to few company meetings for small asset managers.

The UK has made a lot of progress on corporate governance notably with the introduction and revision of the FRC Stewardship Code. The Code states that effective monitoring is an essential component of stewardship (Principle 3). Corporate access is one possible to exercise effective monitoring of investee companies. Any changes in the rules should consider corporate governance aspects.

The international dimension

The proposed rules changes provide a level playing field to asset managers operating solely within the UK. UK-based international managers operating sub-advisory international arrangements are left at a regulatory disadvantage compared to other markets where Corporate Access is not a banned activity. In the US for instance the SEC recognises Corporate Access as a commissionable research service. Market practice is guided by regulation, so in locations such as the US and particularly China (where almost all corporate interaction is broker-managed), UK asset managers will be competitively disadvantaged. AMIC members believe that additional FCA guidance in respect of the territorial reach of the COBS rules, in particular 11.6.8(4A), should be provided taking into consideration the international activities of asset managers.

Unbundling

The FCA is also proposing new guidance on disaggregation – so that where a manager receives goods and services on a bundled basis, which include elements which are substantive research and elements which are not, the manager shall only apply the exemption in relation to the justifiable elements. Without the sell-side cooperation – as mentioned above, some managers fear it may be hard to disaggregate – or unbundle – these services and to allocate a fair cost to the allowable components.

The AMIC would be happy to discuss further with you the points made in this letter. The Secretary of the AMIC, Nathalie Aubry-Stacey, can be reached at Nathalie.aubry-stacey@icmagroup.org should you need further information.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Parker', with a long horizontal stroke underneath.

Robert Parker
AMIC Chairman