Financial Services User Group

Brussels, 5 July 2012
FSUG / MARKT/H3 D(2012)

Mr Markus Ferber
Member of the European Parliament
Group of the European People's Party (Christian Democrats)

email:
markus.ferber@europarl.europa.eu

Subject: Conflicts of interest in investment consulting

Dear Mr Ferber,

The European Commission published two legislative proposals (a directive, MiFID II, and a regulation, MiFIR) in order to replace the current directive on markets in financial instruments (MiFID I). You were appointed the rapporteur to develop the EP's position, and you have recently published corresponding draft reports.

It is the view of the FSUG that certain positions set out in the draft reports, if adopted, would represent not just a missed opportunity to make investment markets work for EU citizens, but an actual backward step in terms of investor protection. These proposals are unlikely to restore investors' confidence in the EU policymaking process, quite the contrary in our view.

While the UK, the Netherlands and Australia, for example, are moving to address 'head-on' the conflicts of interests in the retail distribution of investment products by – in particular – banning commissions for financial 'advisers', the MiFID II and MiFIR rapporteur is eliminating the only EC proposal in that direction.

Indeed, amendments 65 to 71 to Article 24 of MiFID II, proposed in your reports would establish:

(1) A weaker and less precise disclosure requirement for 'inducements' than the one currently in the 2006 MiFID implementation Directive Article 26(b)(i).

(2) The elimination of the only and already modest EC proposal to limit inducements in the retail distribution of investment products: to ban commissions, but only for 'independent' advisers (i.e. probably for less than 5 % of the retail distribution in many Member States in Europe).

(3) The potential elimination of the existing conditions for an intermediary to receive inducements as stated in the MiFID implementation Directive Article 26(b)(ii):

- that he "must be designed to enhance the quality of the relevant service to the client";
- and must "not impair compliance with the firm's duty to act in the best interest of the client";

as it is uncertain whether these provisions of the 2006 MiFID Implementation Directive would remain in force after the adoption of MiFID II.

The European Commission's Financial Services User Group (FSUG) asks again that:

- Any intermediary using the title 'independent' should conform to strict conditions including at the very least:
  - The requirement to consider the whole of market, not a limited selection, before advising on suitable financial products or instruments.
  - The remuneration paid to the adviser by the client must be determined and agreed independently by the adviser and client. The client should be offered the choice of paying the agreed fee in a lump sum or in a series of instalments[1]. The adviser fees should be set out in advance so that the investor can make an informed choice between different advisers.
  - The remuneration or other revenue received by the adviser cannot be determined or influenced in any way by product providers/ manufacturers (including commission or other inducements).
- Any intermediary who does not meet the conditions relating to 'independence' should be called a sales agent to make clear the relationship between the sales person and client.

We kindly ask you to take this position of the European financial services users into account when finalising the MiFID II directive.

Yours sincerely,

Mick McAteer
Chairman of the FSUG

---

[1] This addresses the misleading claims by defenders of commission payments that i) a commission structure is more affordable than agreed fees, and ii) insisting on fees would exclude consumers from the advice market.