Minutes of a Meeting between Association for Financial Markets in Europe ("AFME") and the UK Financial Conduct Authority ("FCA") held on 10 May 2018 at 25 Bank Street, London E14

The FCA was represented by Adam Wreglesworth, Mhairi Jackson and Federico Cellurale.

AFME was represented by Andrew Brooke, Julian Allen-Ellis and Louise Rodger.

The following AFME member firms from its MiFID II Research Working Group attended: Barclays, Bernstein, BNPP, Citi, Credit Suisse, Daiwa, Exane, JP Morgan, Mizuho, Oppenheimer, Nat West Markets, Stifel, UBS , Mediobanca HSBC, Morgan Stanley, Wells Fargo, BofAML, Kepler Chevreux. Karen Anderson, Suzy Campbell and Ciara Brady from Herbert Smith Freehills were also in attendance.

[This document has been reviewed by the FCA. However, it does not constitute formal FCA guidance and should therefore not be relied on as such. Please also note the disclaimer set out at the end of this document.]

Introduction

AFME thanked the FCA for attending the meeting to discuss the impact of the new MiFID II rules on corporate access and noted that a list of questions (as set out below) had been sent to the FCA in advance.

The FCA noted that it wanted to engage with both the buyside and sell side of the market. The FCA made some high level opening comments, noting that:

- the slides produced for the Investment Association for a presentation on 30th April 2018 (attached) provide a high-level overview of the area;
- FCA Handbook rules COBS 2.3C and ESMA Q&A, section 7, question 7 (ESMA 35-43-349) are relevant to the sell side;
- the two primary sell side obligations are to:
  - price corporate access separately from research and execution, with pricing set on a commercial basis); and
  - mitigate inducement risks;
- the buyside has its own obligations to consider what services constitute an inducement and whether a service is an MNMB; the sell side may place a degree of reliance on the buyside; nonetheless it is the FCA's expectation that the sell side will have in place:
  - an appropriate policy;
  - a process for documenting the decisions made in relation to pricing; and
  - a record of the events held to enable the firm to demonstrate how the actions taken can be justified in terms of the MiFID II inducement rules;
- the FCA's Business Plan highlights research unbundling as an area of supervisory focus for the next 12 months with a thematic review to be carried out before April 2019 (cross section of buyside and sell side firms);
- firms might consider work to ensure that appropriate records are in place.

The FCA attendees then gave their responses to AFME's questions as follows.

1. **AFME notes that many asset managers are now paying for research and sales and corporate access (including, on occasion, logistics-based corporate access) services out of their own funds. It appears that some believe that, as they are using their own money, they can pay for that range of services in an aggregate way. Is this acceptable or should the corporate access service be broken out?**

The FCA considers that it would be acceptable to issue one omnibus invoice for services such as research and corporate access, but it expects that it would separately itemise and price the various services.

2. **Some asset managers consider non-deal roadshow meetings (NDRs) that take place in their offices to be minor non-monetary benefits (MNMBs). They believe that the corporate has decided to meet with them (thus allocating the scarce resource that is their management's time) and the broker is playing the role of facilitator only. Is the FCA comfortable with that?**

The FCA said that, if the broker is only making logistical arrangements, this could be treated as an MNMB requiring no payment or a minimal payment. The FCA also noted that where:

- the corporate identifies target investors and asks the broker to provide logistical assistance, this would also be more likely to be seen as an MNMB;
- an NDR is hosted in the corporate's office, or indeed by the asset manager, this would increase the likelihood of it being considered an MNMB (and reduce the likelihood that a payment would need to be made);
- an asset manager has approached a corporate, and the corporate agrees to a meeting but defers to the broker to make the arrangements, this facilitation/logistical service is more likely to be seen as incidental/as an MNMB.

The FCA also commented that: (a) an asset manager might nonetheless choose to make a payment (because, for instance, in the asset manager's judgment, the logistics offered by the broker has some value for that manager); and (b) the assessment of whether the service was an MNMB rests with the buyside firm.

In relation to expected record-keeping by sell side firms the FCA noted the following:

Brokers should maintain an internal record of who initiated the meeting e.g. email request for meeting from buyside/email request from issuer asking you to arrange the meeting. Documented policies and procedures should make provision for any caveats e.g. it may not be appropriate to provide corporate access for free for emerging markets issuers given the increased cost.

In a scenario where a corporate approaches a broker for non-deal corporate access, and where the bank would pay transport costs: where the benefit is provided to the issuer, the bank need not charge, but it is for the asset manager to decide whether it may be a MNMB.

The provision of access to policy makers such as central bankers and economists is a potential service or benefit for asset managers (e.g. as an opportunity for them to understand economic trends) and brokers may need to price and charge for those events.

Investor field trips attract a price and the exclusivity of the event is a factor that would indicate there was an inducement risk.

3. **Some asset managers believe that they should not have to pay for corporate access to meet with a corporate that they already own a stake in or where the asset manager has been identified as a target by a corporate. (Note: the largest UK asset managers are shareholders in most corporates that do roadshows in the U.K.). Is the FCA comfortable with this**?

The FCA commented that, if an asset manager holds a material shareholding in a corporate, there is a greater likelihood that the manager will be allocated a meeting by the corporate and/or is able to ask for a meeting with the corporate, which may indicate the provision of corporate access is an MNMB. However, there is no automatic exemption and the assessment needs to be made on the facts in each case.

4. **Can conference plenary sessions – where a broker has invited either their entire or a very broad client list - be considered a minor non-monetary benefit?**

Such sessions are most unlikely to qualify as an MNMB as access is linked to a broker's client list and not the general public as envisaged in the ESMA Q&A.

There could be circumstances where such sessions could be treated as an MNMB if the broker can demonstrate that they were not cutting out a segment of the market or particular analysts. An assessment would have to be made by the firm ex ante, i.e. not after the event. An event that was intended not to be exclusive, but which was in fact not attended by many on the day, could be considered to be an MNMB, but where this became a pattern that was repeated over several events, this would catch the FCA's attention when carrying out a review.

5. **Can substantive research be delivered at a corporate access event (e.g. where an analyst is hosting a field trip or participating in a conferences) on the basis that the price for the research delivered at the event is included in the research price for attending clients and no non-paying clients attend.**

The FCA takes a pragmatic approach and considers that, where an event is priced upfront and the ticket includes access to all services at the event, it may be impractical to have separate pricing for individual elements (specifically research content); a detailed separation of research and access elements is not required.

The FCA was asked whether, in a situation where a conference fee included research, clients with a Research Payment Account could attend for free? The FCA expressed reservations about ascribing different amounts for different content but stressed that the pricing should be agreed ex ante. The FCA would also have reservations if the amount was subject to an ex post assessment and top up payment.

The FCA also noted that the analysis would depend on the facts of the specific conference. For instance, where a research client attends a conference which is primarily a research conference, but has a small element of corporate access, the FCA is comfortable that it could be viewed as a research conference and that the research client may be able to accept the element of corporate access as an MNMB. The position would be the same for a corporate access event with small elements of research (such as a research presence on a panel).

Ex post analysis is not required to assess whether the corporate access element was in fact valuable and whether an additional payment should be made retrospectively. The FCA expects a common-sense approach to be taken and for that to be documented in a broker's policy.

6. **Some asset managers have developed their own pricing tariffs for taking part in corporate access events, which may differ substantially from the broker's pricing list. How should the broker act in such cases, in particular where the price the asset manager is willing to pay is lower than the broker's price? Is a broker allowed to accept a lower payment when it falls below its cost of provision, assuming they have informed the client that the ascribed value does not cover costs?**

The FCA noted that this is a matter for commercial negotiation. EMSA has stated that the pricing should still satisfy the test of being at "commercial levels" and FCA does not have anything to add to that guidance.

However, the FCA is looking for reasoned, documented thresholds of the range of pricing acceptable to brokers. The compliance function of each broker should determine what audit trails are required. There could be an overarching policy setting out for example the thresholds, the criteria to be taken into account if the prices are above or below those thresholds (whether that is the cost of provision or a value-based threshold), and the need for departures should be documented on an exception basis.

The FCA accepted that the use of a subscription model for corporate access is possible. This should be documented, including in relation to the nature and quantity of events. The events provided as part of the subscription should be recorded and the agreement and its operation in practice should be periodically reviewed to ensure the corporate access provided is within the acceptable range.

A hypothetical scenario was presented by a broker present where a broker's charge for corporate access is £x, but the investor is only looking to pay 50% of £x, which is marginally below the broker's cost price. The FCA stressed that there was no prescribed threshold and it was up to firms to determine in each instance whether the lower amount nonetheless remained a "commercial level", in accordance with each firm's risk appetite. If this continuously resulted in underpayment by a client, the firm would wish to consider with its compliance department whether this remained acceptable or gave rise to a heightened risk of inducement.

The FCA also commented that, if the cost being borne by the broker was primarily in relation to the provision of logistical services, this was less likely to create a material inducement risk.

The FCA agreed that it would expect to see evidence of the biggest users of corporate access paying more than the smallest and that it would be wary of significant outliers.

Supplementary questions raised in the meeting

A. Noting that the FCA has referred to appropriate commercial rates for corporate access, does it agree that logistics costs might be acceptable benchmarks for payment?

Yes, in some circumstances logistic costs may be an acceptable benchmark; in others the assessment would be more nuanced. There are a number of factors which could be relevant e.g. the benefit the parties receive or the value the third-party facilitator brings to the table.

B. Does the FCA agree that the allocation of access to corporates may be governed by a variety of different factors?

The FCA acknowledges there are several factors which inform that decision and it is open to hear further from the industry on this.

The FCA noted two different scenarios, where the corporate has too many slots available but not enough interest, and the opposite is the case and allocation is difficult. The FCA would expect these to be recognised in a firm's policy, and that factors to be taken into account would include:

- the size of an investor's existing shareholding;
- indications of interest on the part of investors in the issuer or sector;
- the preference of the issuer.

The FCA also noted that: (a) such factors would be a reasonable way to allocate what may be a scarce resource; and (b) having a clear policy as to how a firm would look to carry out such allocation and being consistent with that policy is what they would expect to see.

7. **Is the FCA aware of some of the inconsistencies that exist between its stance and that of other national regulators? For example - the AMF appears to imply that because of the 'concierge' nature of setting up corporate access – that part of the service could constitute a minor non-monetary benefit because it views the monetary cost as being relatively low – and hence can consume it for free. How does the FCA expect AFME members to respond to those clients?**

   The FCA is not aware of significant inconsistencies between its approach and that of other national regulators. It noted that the FCA had extended the requirements to CPM firms as well as MiFID firms and therefore the approach of other NCAs towards CPM firms may be more permissive.

   The FCA did not consider the guidance given by the AMF on the concierge nature of corporate access to be dissimilar to the FCA's approach. There would always be a judgement call about what is in fact minor and what is not.

   The FCA would not examine an EU investor's categorisation of MNMB as this would be a matter for the recipient's regulator. Brokers can place a reasonable degree of reliance on the judgment and decisions of MiFID 2 buyside firms.

8. **How should AFME members deal with asset managers in those jurisdictions that have not yet transposed MiFID 2?**

   The FCA stated that it will not make a judgement call about asset managers/buyside firms in another jurisdiction and referred to specific ESMA Q&A (Question 14) on this topic. However, the FCA noted that sell side firms should consider whether their own pricing puts them at significant risk with regard to compliance with their own obligations.

9. **In a situation where a broker facilitates a meeting between an SSA issuer and selected investors, is this something that the FCA would consider to be an inducement? We note that issuers, by their nature, are expected to issue on a regular basis through the course of the year often against a pre-defined timetable.**

   The FCA accepted that SSA debt issuers are required to be in the market frequently and that there may be a pool of interested investors expressing a view on the creditworthiness of particular issuers. Given the link to capital raising , the FCA are content that such events would not need to be paid for, since the benefit is at least partly for the issuer and not solely for the benefit of the investors.

As the meeting concluded, the FCA confirmed that they would be willing to provide information to corporates on the rules. AFME thanked the FCA.

Date: 8 June 2018