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The new agenda – conflicts and inducements

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Today's 40 minute briefing: Agenda

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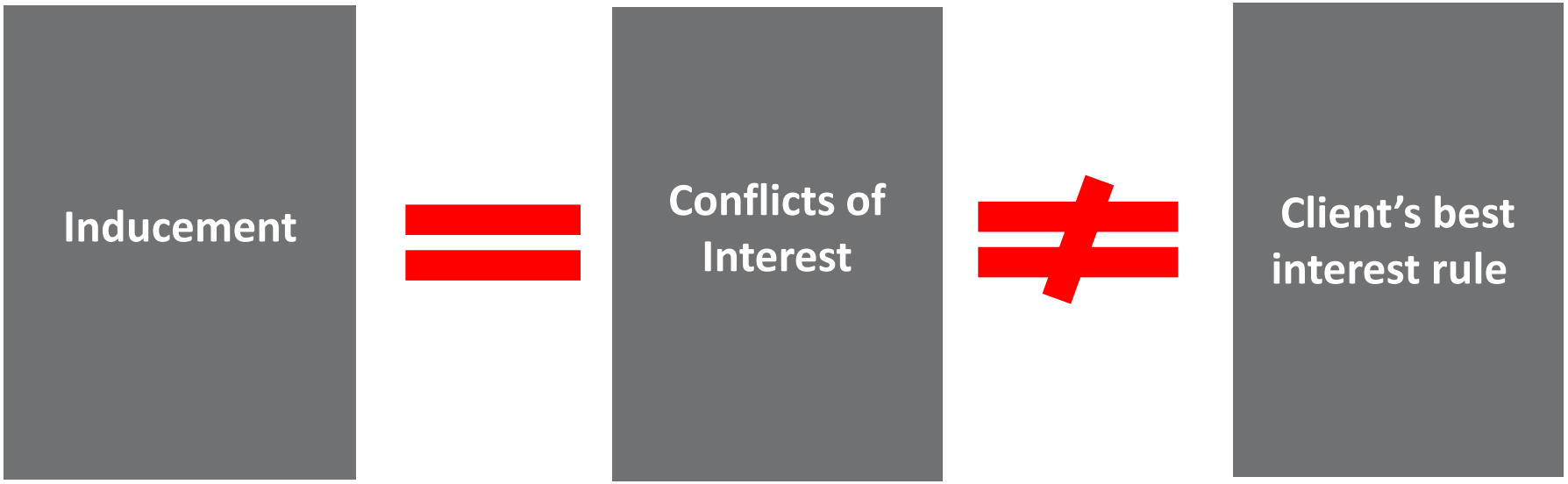
The key FCA rules re-examined

The connection



Payment or receipt of inducements creates an inherent conflict between the firm's own interests and those of its clients.

We consider that conflicts of interest remain a key risk factor across markets, and will **continue our work to ensure firms implement robust strategies to manage them.**

FCA Business Plan 2016/2017

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Reminder of rules

Principle 8 (Conflicts of Interest); Principle 3; SYSC 3.1.1R; SYSC 6.1.1R; SYSC 10

If firm (or appointed representative / tied agent) must not pay or accept any fee or commission or provide or is provided with any non-monetary benefit to or by any person (COBS 2.3.1R) other than

Excluded are fees paid to the client / someone acting on their behalf (COBS 2.3.1R(1))

Excluded are proper fees which by their nature cannot give rise to conflicts – i.e. custody costs, settlement fees, regulatory levies (COBS 2.3.1R(3))

Excluded are small gifts and minor hospitality received in personal capacity below a certain level (COBS 2.3.8G)

Must be designed to enhance quality of service to client (COBS 2.3.1R(2)(c)

- ESMA Level 3 Guidance from MiFID I
- Permissible non-monetary benefits (COBS 2.3.15G)

+

Must not impair compliance with firm's duty to act in best interests of client (COBS 2.3.1R(2)(a))

- Act honestly, fairly and professionally
- Client's best interest rule (COBS 2.1.1R)
- Principle 1 (Integrity)
- Principle 2 (Skill, care and diligence)
- Principle 6 (customers' interests)
- Permissible non-monetary benefits (COBS 2.3.15G)

+

Existence, nature and amount of payment (or method to calculate it) must be clearly disclosed to client (COBS 2.3.1R(2)(b))

- In a manner that is comprehensive, accurate and understandable
- Before the provision of the service
- Disclose essential arrangements relating to the payment and undertake to provide further details on request (COBS 2.3.2R)

Cannot be paid to advisors in connection with personal recommendation (COBS 6.1A)

Cannot be paid to advisors re: referral to discretionary managers (COBS 6.1A.4AC)

Cannot be paid by product providers (to advisors / platforms) (COBS 6.1B)

Cannot be paid to/by platforms (some exceptions) (COBS 6.1E)

Dealing Commission Rules (COBS 11.6)

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Permitted non-monetary benefits

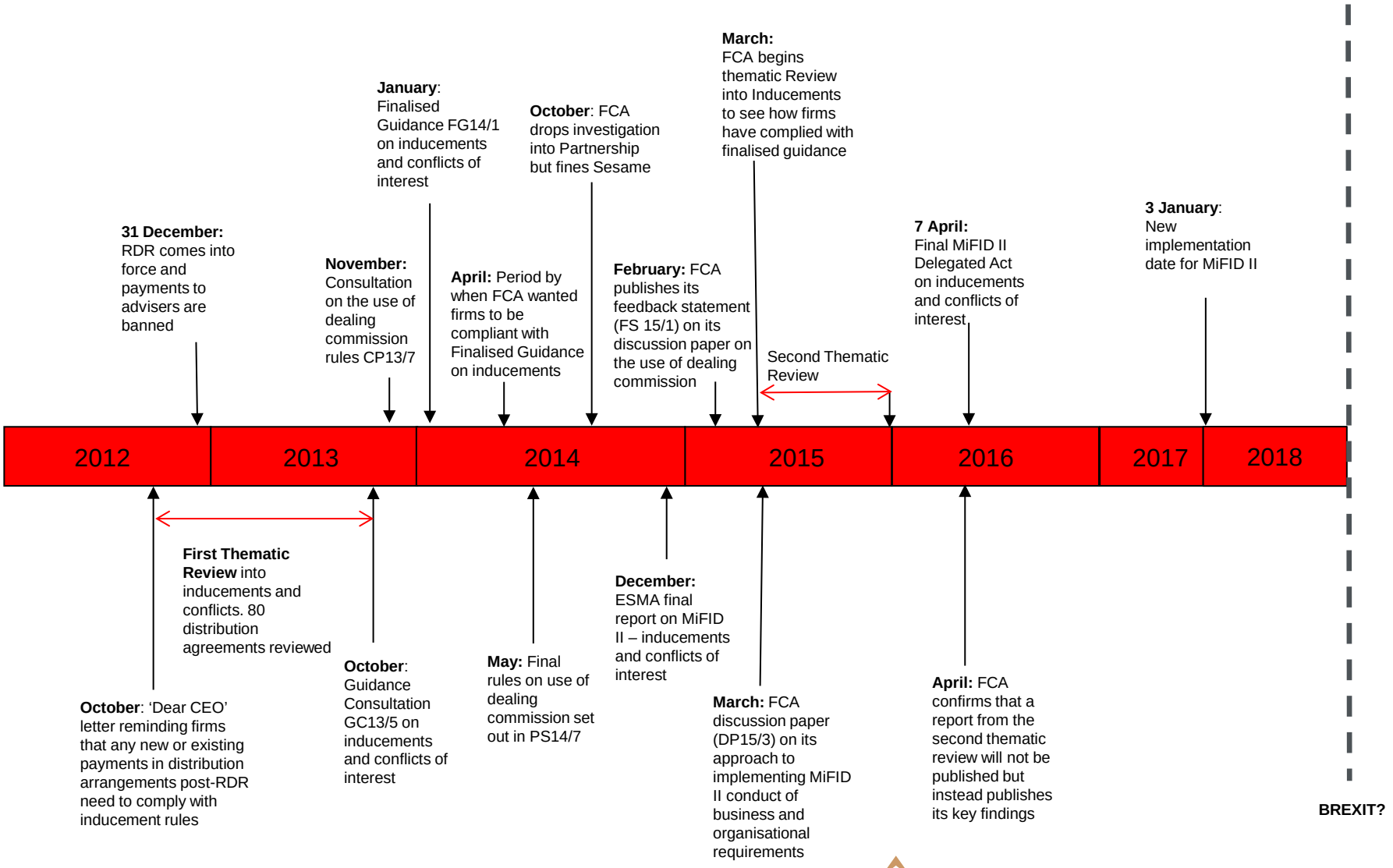
Question of fact whether the inducements conditions are satisfied (COBS 2.3.14G).

- **Table of Reasonable non-monetary benefits**

COBS 2.3.15G	
Paragraph 1:	**Hospitality and gifts and competition prizes**
Paragraph 2:	**Promotional activity**
Paragraphs 3 – 6:	**Joint marketing exercises**
Paragraph 7:	**Seminars and conferences**
Paragraph 8 – 12:	**Technical services and IT**
Paragraph 13:	**Training**
Paragraph 14:	**Travel and accommodation expenses**

FCA thematic work on conflicts and inducements

Timeline of thematic review



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FCA Findings – First Thematic Review (2013)

To avoid breaching Principle 8 and the inducement rules

- **Reminder:** both actual and potential conflicts need to be managed (not just actual conflicts)
    - a potential conflict includes where a firm could receive a benefit but has yet to do so
- **Clarification:** on the extent of the existing guidance on 'permitted' non-monetary benefits – see Table
- **Clarity:** on the types of benefits not considered to give rise to conflicts, namely:
  - where the benefit is **reasonable** and **proportionate**;
  - is of a **limited** scale and nature;
  - is not relied on by the advisory firm to continue to service its customers; and
  - would not reasonably result in **channelling** of business to the provider.

  Where the conflicts cannot be managed, arrangements need to be terminated.
- **Confirmation:** that selecting a provider for an advice panel should not be linked to their willingness to purchase support services from the advisory firm

Examples of Poor Practice

- Longer term, multi-year agreements (5 years +)
- Agreements where a provider can **negotiate reduced payments** in return for reduced services from the advisory firm which is linked to the provider losing its place on the advisory panel or to a material reduction in sales of its products
- Advisory firm making **profits** (over and above normal market rates) for providing services to a provider and which are **linked** (directly / indirectly) to distribution of the provider's products
- Advisory firm **staff** having **dual roles** – providing information and guidance to advisers on the benefits and features of products while also being responsible for the negotiation and provision of services to providers

FCA – Finalised Guidance (2014)

Benefits falling within the table	Benefits falling outside the table
Paragraph 10 – IT development and maintenance	
• Payments restricted to those necessary to integrate and feed information into a provider's IT systems and which are linked to equivalent cost savings to the provider or its customers	**The following payments create conflicts and are inducements:** • Payments to develop advisory firm's general IT systems or infrastructure (i.e. IT systems that go beyond what is required to operate the provider's software) • Annual payments for general IT maintenance • Payments for the development of IT systems or infrastructure to initially integrate the advisory firm's systems with the provider's systems
Paragraph 13 – Training	
• Training available to all advisory firms on the features and benefits of providers' products or services • Training available to all advisory firms on subject areas relating to advisers' CPD • Reimbursement of reasonable costs incurred by advisory firms in organising training events. **Providers can share the cost of training where more than one provider gives training provided it is UK based and the costs are for the actual training given**	• Paying advisory firms to attend training • Paying for training where there is no enhancement of the service to clients • Incentivising advisory firms to attend training through other means • Contributing disproportionately to the costs of organising a training workshop for a particular advisory firm • **Paying for UK advisers to receive training outside the UK**

FCA – Finalised Guidance (2014) cont…

Benefits falling within the table	Benefits falling outside the table
Paragraph 7 – Conferences and seminars	
• Payments **to independent advisory firms** which are proportionate contributions designed to recover the costs associated with the providers' active participation (e.g. presenting on features / benefits of products / services or legislative / technical matters) • Payments **to independent advisory firms** calculated by reference to (i) the overall costs to the advisory firm in organising the event; (ii) the presentation time of the provider; and (iii) the number of advisers in attendance	**Where the following payments are not in the clients best interests, they are an inducement:** • Payments for participating in advisory firms' annual conferences not linked to active participation (e.g. where participation includes having a presentation stand, co-hosting a dinner, having the opportunity to network) • Payments calculated by reference to how much it might have cost to have face-to-face meetings with each individual adviser • **Payments for any conferences/seminars outside the UK** • **Payments by sole providers or providers on restricted advice panels (as advisers should already be aware of their products/services)** • **Payments which equate to more than what the advisory firm pays (advisory firms should pay 'significantly more')** • Payments to reimburse all costs involved in running seminars and conferences

FCA – Finalised Guidance (2014) cont…

Benefits falling within the table	Benefits falling outside the table
Paragraph 1 – Hospitality and gifts	
• Payments complying with a firm's hospitality policy approved (by an approved person or board committee) which requires senior approval for high levels of payments and processes and controls to ensure hospitality does not unduly influence advisory firms • **Payments that satisfy the 'reasonable value' test, namely:** – **Events in the UK, not based on criteria that incentivises poor behaviour (e.g. volume of business generated); is for business purpose (e.g. product training)** – **Food / drink payments are proportionate** – **Providing accommodation is necessary (e.g. event over 2 days, remote location)** – **Costs calculated on a 'per head' basis, assessed against previously agreed monetary limits set by an appropriate committee certified by a 'second line' function (e.g. compliance)** – **Prizes/gifts not extravagant / linked to business purpose (e.g. knowledge of provider's products / services) / not based on criteria which incentivises poor behaviour** – **Hospitality / gift log maintained, cumulative payments assessed against monetary limits, logs regularly reviewed and independently audited by compliance periodically**	• Expensive hospitality events including events overseas • Events over a period of several days • Events including the spouses / partners of advisers • **Payments of 'an unreasonable value' (e.g. payments which do not satisfy all limbs of the 'reasonable value' test in the previous column** • Sponsorship of events which cover a significant proportion of the costs of arranging the event

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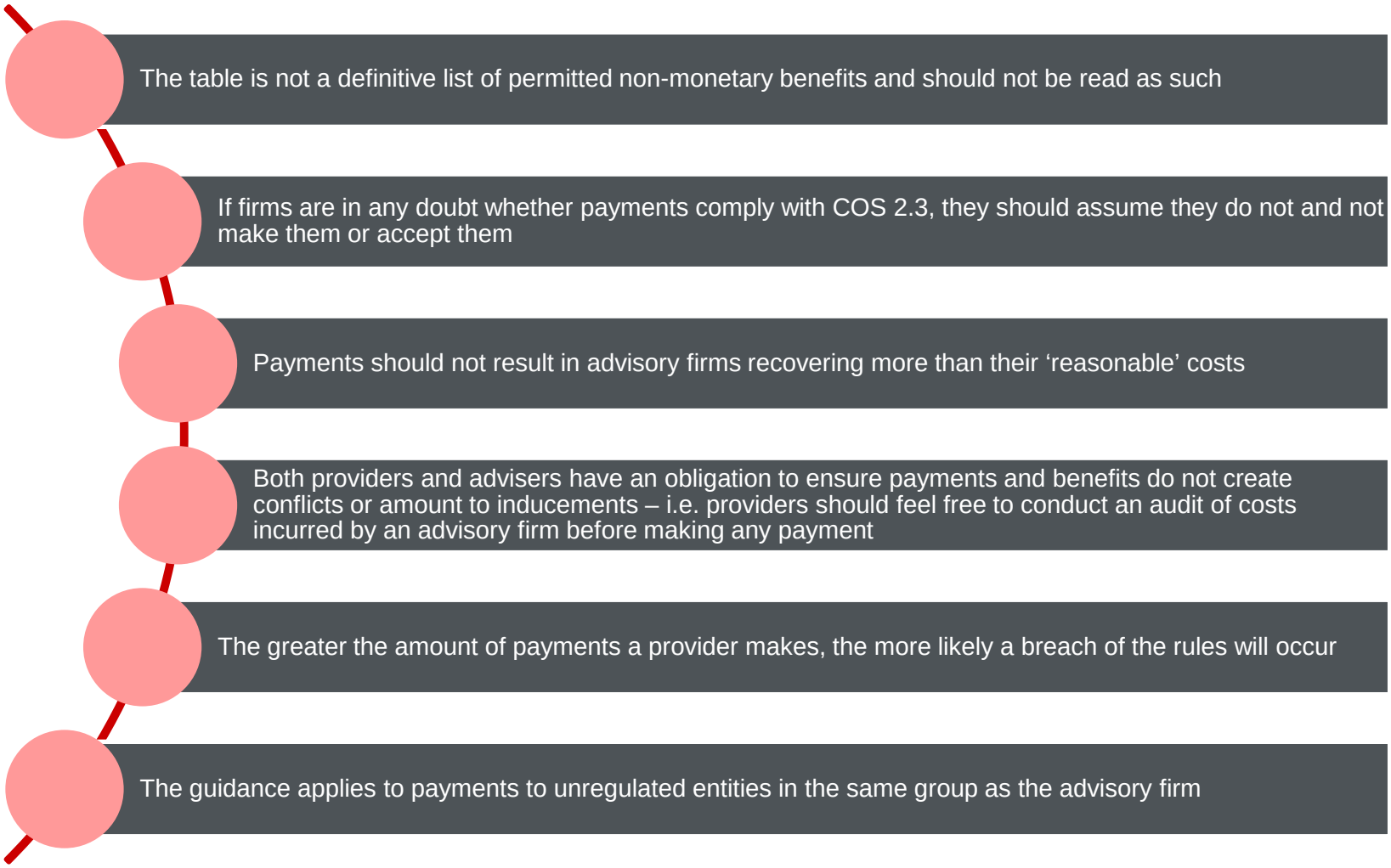
FCA – Finalised Guidance (2014) cont…

Benefits falling within the table	Benefits falling outside the table
Paragraph 2 and 6 – Promotional activity	
• Payments made by reference to an objective market (e.g. what a trade publication charges) where it can be demonstrated how the market has been derived and that any profits do not cause a conflict of interest • Payments for placing financial promotions which only reimburse the costs incurred by the advisory firm	• Payments made by reference to a **skewed**, subjective market (e.g. what other providers had to pay) • **Generally payments made by sole providers or providers on restricted advice panels** • Ongoing promotional activity in a given period **where aggregated payments are substantial** • **Payments which include any element of profit**
Generally	
• Payment for receiving MI, data and research which only reimburse the cost of the advisory firm producing it, are for a genuine business benefit for the provider and where it can be demonstrated that it is expected to enhance the quality of the service to customers	• Any payments **for regular or structured meetings** with senior management – **these are prohibited inducements** • Payments for receiving MI, data and research which include a profit element • Generally, payments to advisory firms for carrying out services outsourced to it from the provider

FCA Findings: Additional general commentary



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FCA Findings: Systems and controls

- **Detailed analysis** of an advisory firm's offered services carried out before entering into agreements
- **Written policies** on **distributor spending** (to provide an effective governance framework)
- Adherence to these policies **overseen** by relevant executive committees (with independent challenge from risk and compliance), with **breaches recorded** and **escalated** in accordance with the firm's established processes
- The **negotiation** of distribution agreements was separate from securing panel placement
- **Controls** implemented to ensure that benefits from providers did not affect personal recommendations
- **Boards** of firms are **actively engaged** in the process for entering into agreements and they (or a delegated committee) had approved the contractual arrangements

Fined: Sesame Limited - £1,598,000 (after 30% discount) - 30 October 2014

Facts: Sesame is the largest network of financial advisers in the UK. Sesame distributes products on behalf of investment product providers. The Retail Distribution Review banned commission payments from providers to advisory firms. Sesame told certain providers that it expected them to purchase additional services from companies in the Sesame group in order to secure distribution of their products through Sesame. Sesame effectively set up a 'pay to play' arrangement. Sesame selected providers based on its commercial interests as to the sums it would receive, which was not in clients' best interests. Sesame did not disclose to clients that it had received payment from the providers for additional services.

Found:

- Failure to manage conflicts of interest fairly (Principle 8)
- Failure to not pay or accept any fee or commission, or to not provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service carried on for a client other than those exempted activities (COBS 2.3.1R)

This case serves as an important reminder to firms of the importance of **managing conflicts of interest effectively** by implementing a robust control environment with effective systems to manage the risks. Not doing so risks customers' interests being overlooked in favour of commercial or personal interests.

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FCA Second Thematic Review (2015)

4 main areas of concern:

1. Payments impair a firm's duty to act in the best interests of the client, and cause the firm to put its commercial interests ahead of the best interests of its clients
2. Payments/benefits are provided which are not designed to enhance the quality of service provided to the client

> We remain concerned about how the market is operating following the implementation of RDR and that alternative ways of preserving features of the market that the RDR intended to eradicate may be maintained, via non-commission payments and benefits (typically included within 'distribution agreements' between provider and distributor firms) and are now undertaking a further review of market practice.

3. Permitted payments/benefits are not adequately disclosed to enable the client to understand the existence, nature and amount of the payment or benefit, so that an informed decision can be made
4. Adviser charging rules also restrict payments/benefits that may be permitted under the inducement rules. We are concerned that payments may in effect be subsidising a distributor's general costs, which in turn may subsidise the adviser charges levied by the distributor. In our view, this creates a distortion in the market by potentially giving some distributors an unfair competitive advantage over other firms which do not receive such payments or non-monetary benefits. It also affects transparency to the customer of the true cost of each element of service.

FCA Second Thematic Review (2015)

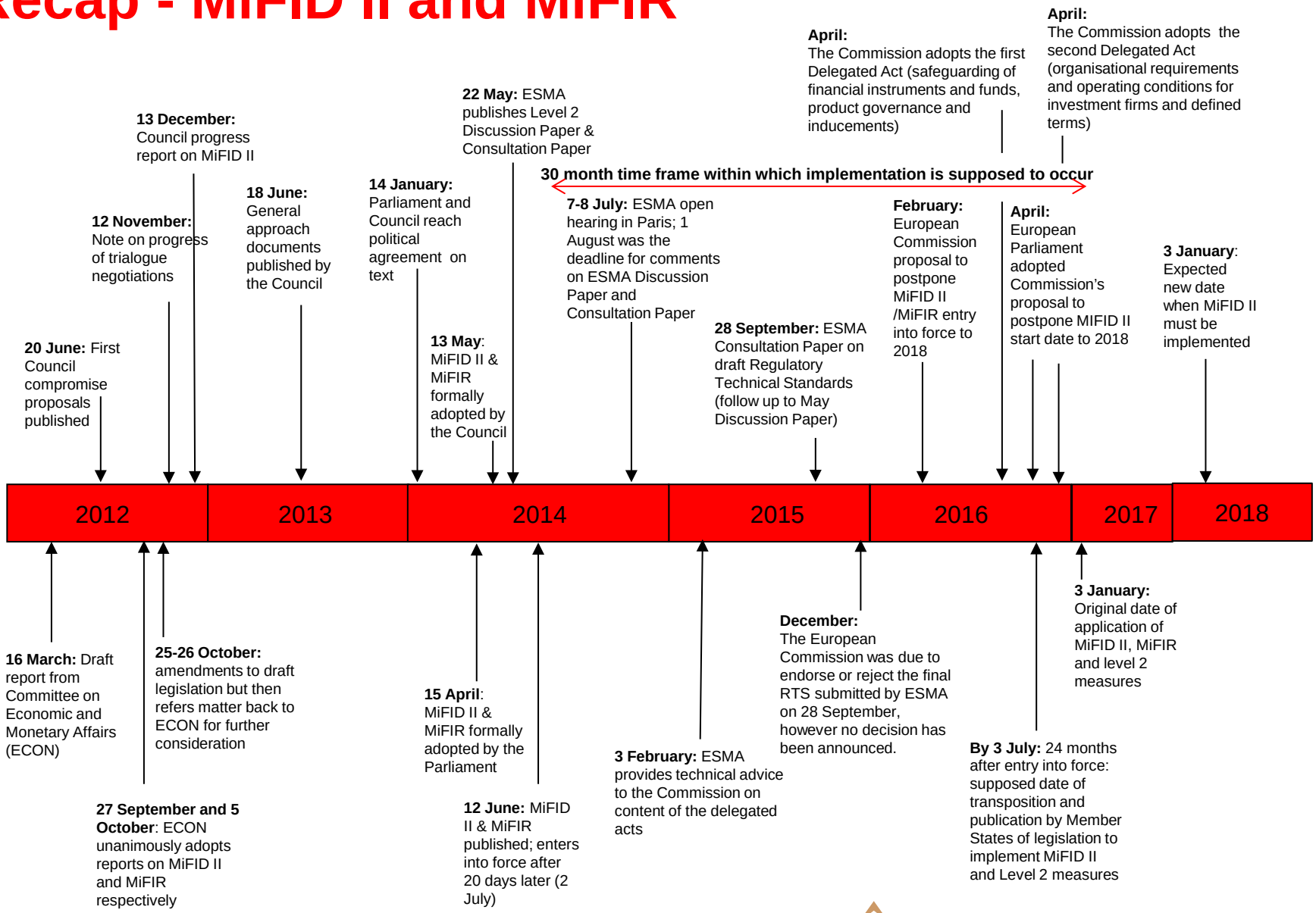
Key Findings

- **Hospitality** provided or received did not always appear to be designed to enhance the quality of service to the client
- **Hospitality** that is not designed to enhance the quality of service to clients is offered in connection with other benefits that do meet the requirements
- **Hospitality logs** did not always record relevant detail or were not well maintained
- Advisory firms' **costs** were reinbursed in excess of what they incurred when facilitating training or educational material supplied by product providers or when collecting management information
- MiFID firms were not providing clients with an **indication of the value** of allowable benefits provided

> Your firm should consider these findings and expectations and ensure they meet the current requirements.

The MiFID II investor protection angle

Recap - MiFID II and MiFIR



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Inducements for investment advice and portfolio management

- Cannot accept and keep any third party payments other than acceptable minor non-monetary benefits
- Must be reasonable and proportionate and of a scale that is unlikely to influence firm's behaviour to detriment of client's interests
- Must disclose before providing service

- Return to clients fees, commissions and monetary benefits ASAP after receipt
- Policy to ensure that amounts are allocated and transferred
- Inform clients through periodic statements

Acceptable minor non-monetary benefits:

(a) Information or documentation relating to products or services which is generic in nature or personalised

(b) Issuer commissioned/paid third party new issuance material provided relationship disclosed and made available at the same time to other investment firms or general public

(c) Participation in conferences, seminars and other training events

(d) Hospitality of a reasonable de minimis value

(e) Other minor non-monetary benefits which a Member State deems capable of enhancing the quality of service and are of a scale and nature that are unlikely to impair compliance with duty to act in client's best interest

Position on inducements under MiFID II

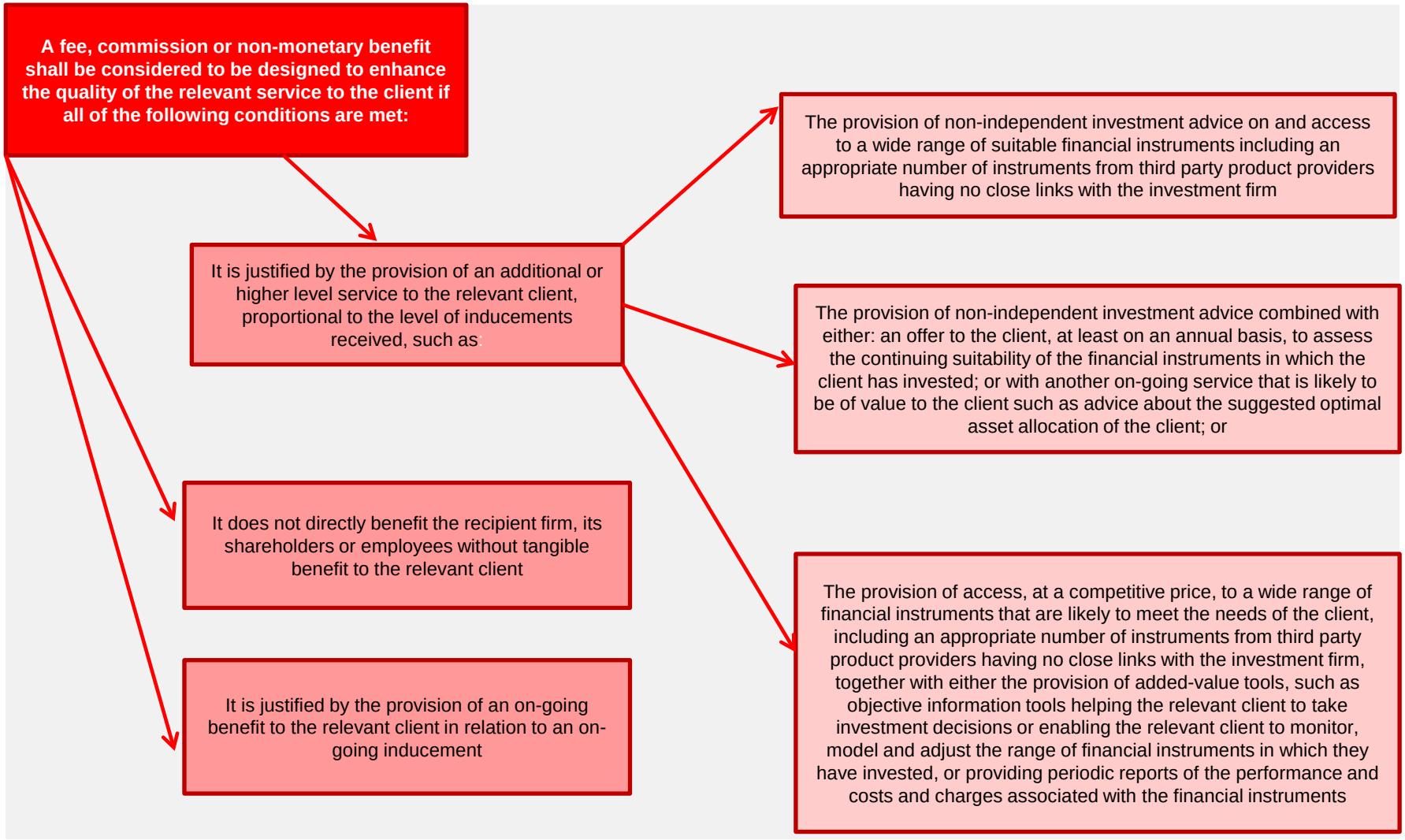
	Accept and retain fees and commissions from third parties?	Accept and retain non-minor non-monetary benefits?	Accept and retain minor non-monetary benefits?
Independent advisers	No	No	Yes
Discretionary investment managers	No	No	Yes
Other investment firms	Yes	Yes	Yes

What is new in the MiFID II Level 1?

MiFID II strengthens the current inducement rules and introduces the following changes:

- Firms providing independent investment advice or portfolio management are prohibited from receiving and retaining any fees, commission, or monetary or non-monetary benefits from third parties – these payments / benefits can be received but they must be passed on in full to clients
- After much negotiation, minor non-monetary benefits are excluded from the prohibition but they must not impair a firm's duty to act in the best interests of its clients
- Firms not providing independent investment advice or portfolio management must comply with the existing inducement rules from MiFID 1 for all types of third party payments
- Firms are unable to set off any payments from fees owed to them
- Clients need to be accurately and, where relevant, periodically informed about all the fees, commissions and benefits the firm has received in connection with the investment services provided
- Where applicable, firms must inform clients on how the fee/commission/non-monetary benefit can be transferred to them

The quality enhancement test



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Other aspects

- **Record keeping**

Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

  - **By keeping an internal list of all fees,** commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services
  - By recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the **steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client**

- **Disclosure of inducements**

In relation to any payment or benefit received from or paid to third parties, investment firms shall disclose to the client the following information:

  - Prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second paragraph of Article 24(9) of Directive 2014/65/EU. Minor non-monetary benefits may be described in a generic way. **Other non-monetary benefits received or paid by the investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;**
  - Where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and
  - At least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. **Minor non-monetary benefits may be described in a generic way.**

Use of dealing commission and CSAs

The FCA believes, in line with the results of our thematic work, that a more effective market for research and more efficient asset management sector will develop if dealing commission is not used to fund these goods and services. Therefore, the FCA has been supportive of ESMA's proposals.

Source: FCA MiFID II conference, 18 September 2014, David Lawton, Director of Markets, FCA

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Background to the rules on dealing commission

- **Overview:**
  - The rules on the use of dealing commission were introduced by the FSA on 1 January 2006 following a review by the FSA between 2003 and 2005 of bundled brokerage and soft commission arrangements, which identified a number of market failures

- **The rules:**
  - Were considered super-equivalent to the MiFID I inducements regime
  - Restricted the range of goods and services that investment managers could purchase using dealing commission to execution and research only
  - Introduced enhanced disclosures by portfolio managers to their customers on the costs of execution and research purchased
  - Encouraged clear payment and pricing mechanisms like the use of CSAs to enable execution and research purposes to be purchased and valued separately

- **Outcome:** Firms were not exercising the level of control over payments using dealing commission as they would over payments made out of the firm's own resources

Overview of the current rules

- **COBS 11.6:**
  - In brief, applies to investment managers when they execute customer orders relating to shares and related instruments
  - Addresses issues created by “soft” and “bundled” commission arrangements, e.g. where payment for a transactional event was being used to buy other unconnected goods and services
  - Prevents investment managers from acquiring any goods and services from brokers in return for client dealing commissions, except for exempt execution-related and research goods and services
  - Cumulative criteria for research that (if met) give reasonable grounds to consider it exempt, and give rise to a presumption of compliance

- The use of dealing commission to purchase goods or services is generally prohibited unless exemption set out in COBS 11.6.3R applies

- **FCA has concerns regarding:**
  - Lack of transparency and accountability in relation to costs, potentially leading to higher charges for customers
  - Opaque bundled arrangements that mask conflicts of interest where investment manager has incentive to direct trades to certain brokers
  - Lack of effective competition for services bundled with execution

FCA CP13/17: Use of dealing commission

- **The FCA published CP13/17: Use of dealing commission, November 2014**
  - CP13/17 was intended to clarify the criteria for research under the FCA's rules to help firms make better judgements about what can be paid for with dealing commission charged to the fund
  - The FCA identified failures by some firms to make appropriate judgements and apply adequate controls in their use of dealing commission, especially in relation to research goods and services

- **Key changes proposed to COBS 11.6:**
  - **Criteria for exempt research:**
    - Clarifying the cumulative criteria in COBS 11.6.5E determining the characteristics of exempt research and creating a presumption that a good or service is not exempt research where the criteria are not met
  - **Corporate access:**
    - Defining corporate access in the FCA Handbook Glossary and adding it to the list of examples of goods and services that relate to the execution of trades or the provision of research that are not exempt, and so cannot be paid for from dealing commission (COBS 11.6.8, at (4A))
  - **New guidance provision:**
    - Clarifying in a new guidance provision (COBS 11.6.8AG) how investment managers might approach judgements around their duty to act in the customer's best interests and passing charges to the customer through dealing commission for goods and services that meet that exemptions in COBS 11.6.3R(2)
    - The new provision also clarifies the FCA's expectations around making mixed-use assessments where substantive research is provided alongside another good or service that is not permitted to be paid for through the use of dealing commission

FCA PS 14/7: Changes to the use of dealing commission rules: feedback to CP 13/17 and final rules

The FCA published PS 14/7: Changes to the use of dealing commission rules: feedback to CP 13/17 and final rules, May 2014

- FCA feedback includes**:**
  - **Amending the exemption permitting the use of dealing commission and the criteria for substantive research:**
    - There was some support for the changes to the rule in COBS 11.6.3R that provides the exemption to the prohibition on the use of dealing commissions, and the criteria for substantive research in COBS 11.6.5E. The FCA decided to finalise the changes largely as proposed in CP13/17
  - **Corporate access:**
    - Most respondents supported the FCA's approach on the use of dealing commissions to pay for corporate access. The FCA improved and clarified the drafting of the final guidance on making mixed-use assessments, which is equally relevant to corporate access
  - **Mixed-use assessments:**
    - The FCA made minor changes to improve the guidance included under COBS 11.6.8AG in response to feedback, an added wording to make it explicit that mixed-use assessments are equally applicable to non-priced, bundled goods and services
    - The FCA does not expect investment managers to show evidence of their process and the basis of their judgements to demonstrate such assessments are done with the best interests of the customers
- Changes introduced by PS14/7 took effect on 2 June 2014

FCA Feedback statement on DP14/3: Discussion on the use of dealing commission regime (1)

- **FCA published Feedback statement on DP14/3 - Discussion on the use of dealing commission regime, July 2014**
  - Reports on the FCA's supervisory findings and a series of roundtable and bilateral discussions with stakeholders on how the use of dealing commission functions
  - Concludes that "*unbundling research from dealing commissions would be most effective option to address the continued impact of the conflicts of interest created for investment managers by the use of a transaction costs to fund external research*."

- **Supervisory findings:**
  - While some investment managers have improved their governance over how they purchase research with dealing commission, there are still too few firms applying sufficient rigour in assessing the value of the research services they use. The FCA found only two firms that had made significant enhancements that resulted in better outcomes for their clients
  - There is a lack of price transparency in the market for research due to the way the market has evolved, and the bundled supply of execution and research services by brokers makes price discovery difficult
  - Unbundling research from dealing commissions would be most effective option to address the continued impact of the conflicts of interest created for investment managers by the use of a transaction costs to fund external research. The FCA believes it would drive more efficient price formation and competition in the supply of research, removing the current opacity in the market

FCA Feedback statement on DP14/3: Discussion on the use of dealing commission regime (2)

- The FCA disagrees on the use of commission sharing arrangements (CSAs) to facilitate the unbundling of research from execution costs as FCA believes CSAs are "incompatible with the intention of ESMA's proposals" which state that payments for research cannot be linked to the volume of transactions
  - In the FCA's opinion, using CSAs still ties research payments to the volume of executions done on a client's behalf

- **Concerns:**
  - The French regulator, the Authorite des Marches Financieres believes that FCA is being too stringent and feels that CSAs could work if proper guidelines are put in place. The AMF's General Secretary believes that ESMA's proposal does not fully ban the use of CSAs and doing so "could increase the difficulty to finance research, particularly for smaller companies, where it is already difficult to find research"
  - Numerous market participants agree that the FCA approach is too onerous in implementation and could disadvantage the competitiveness of European firms relative to other regions

- The FCA believes the new proposals will foster increased competition in the research space, increase the number of research providers, and drive more innovation and specialised research products

Use of dealing commission: MiFID II

Purchase of research is not prohibited if firm pays through:

Own resources

OR

Research payment account provided:

- The account is funded by a specific research charge to client
- Set and regularly assess a research budget
- Firm is responsible for research payment account
- Firm regularly assesses quality of research against robust quality criteria set out in a policy
- Firms assesses its ability to contribute to better investment decisions
- Before providing service, tell clients of budgeted amount and charge and agree research charge and frequency in terms and conditions
- Provide annual information on total costs incurred by client for research
- If required by client or competent authority, provide further information
- All operational arrangements must identify research charge separately
- Tell clients about any increase in advance
- Any surplus at end of period must be rebated or offset against research budget for following period
- Allocation of budget is subject to appropriate controls and senior management oversight
- Cannot use to fund internal research
- Firm providing execution services must identify separate charges that only identify execution costs

Why is this relevant?

- **Where does it leave the CSA model?**
- **How do you make a research payment account work?**
- **Client money account implications**
- **Shutting off nil value service agreement**

The future of the CSA model

- **The basics:**
  - **Commission Sharing Agreement** (CSA) – a model in which an investment manager enters into an agreement with each full service broker that it chooses to execute with, which provides that the full service brokers retains all or part of the research payments in a separate book typically for three or six months
    - CSA is **not** a soft commission arrangement because there is no absolute commitment in terms of the particular deal flow and there's often a bit of a lack of detail around what research is to be provided and indeed some of the agreements for tax reasons are structured as introducing broker agreements
- **ESMA's approach**:
  - ESMA considers that CSAs have elements that address the conflict of interests between brokers and portfolio managers in respect of research
    - However, the conditions under which such arrangements are currently operated **often do not entirely address the conflicts of interests** at stake
    - **The current use of CSA's** by the industry still enables amounts charged for research by the investment firm to be determined by the volume of transactions of the investment firm with the executing broker, although some investment firms apply budgets to control the total amounts accrued in CSAs
    - CSAs do not guarantee a fair allocation of research costs to the client's portfolio
    - The **lack of certainty** has been reflected in the differing interpretations of its proposals that have been arrived at by certain member state regulators other than the FCA. The French regulator, the AMF, appears to see the CSA as being viewed positively by ESMA

- **FCA's approach:**
  - In contrast, the FCA insists that **CSA arrangements are incompatible with ESMA's MiFID II proposals**. *The FCA's view is that ESMA wishes to see the link between research payments and execution severed entirely and that this cannot be achieved if the CSA model remains in use*.
    - This has led the FCA to view RPAs as a separate and distinct payment mechanism. The FCA clearly expresses its interpretation of the ESMA advice to be an intention to establish a "hard dollar" research market
  - The issue of certain of a manager's clients benefiting from research funded by charges on its other clients would be resolved by establishing a separate RPA for each account, with a pro-rata allocation of cost for items of research which benefit multiple clients pursuing similar strategies
- **Delegated Directive approach:**
  - **Article 13(3)** – every operational arrangement for the collection of the client research charge where it's not collected separately but alongside a transaction commission shall indicate a separately identifiable research charge and fully comply with the conditions relating to the operation of research payments account
  - **Key point:** the wording of Article 13(3) does not expressly require full compliance with all the other requirements around the funding and operation of a research payments account
  - **Question:** to what extent the current CSA model needs to be and can be workably be adapted to meet those requirements?

Impact of Brexit

Key points to remember in the Brexit debate

We are still in the EU and will be for some time:

- Whilst the UK is negotiating its exit it remains a full member of the EU and is subject to EU legislation
- For example the EU Market Abuse Regulation came into effect in the UK (and the rest of the EU) on 3 July 2016
- FCA announcement on 24 June 2016: “Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect”
- The reference to legislation still to come into effect is interesting and has one eye to MiFID II and MiFIR that apply from 3 January 2018

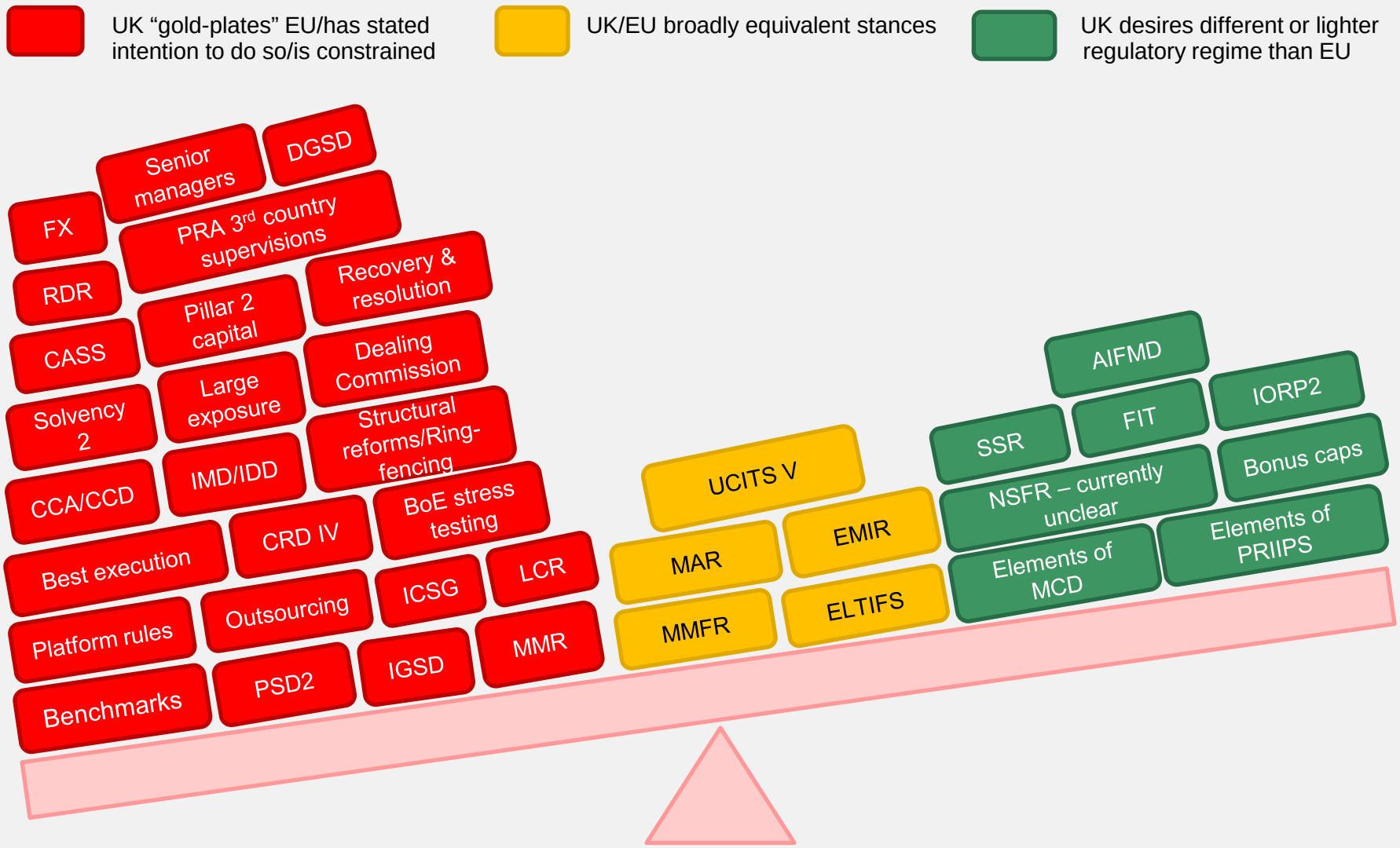
Equivalence:

- Key concept in a number of EU Directives and Regulations including EMIR and Solvency II
- Importantly MiFIR contains equivalence provisions for third country investment firm access to the EU Single Market

International commitments:

- Much of financial services EU legislation is derived from standards and principles produced by international standard setting bodies: the G20, the Basel Committee, the Financial Stability Board, the International Organization of Securities Commissions
- An important analysis may be where EU legislation diverges from international standards e.g. the remuneration provisions in CRD IV are outside Basel III

Brexit: Creating blocks of regulation



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