

Corporate access: a MiFID 2 sideshow that might yet cause a headache for asset managers

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Brokers provide asset managers with trade execution (buying and selling stocks), research (investment recommendations) and corporate access. The latter comprises meetings between executives of listed corporate and institutional investors, mostly in the form of so-called non-deal roadshows. Many investment professionals consider these meetings to be a crucial part of their investment process.

Hitherto asset managers paid the brokers for all these services (execution, research and corporate access) via a 'bundled' fee for trades (e.g. 15bp). The trading costs are directly charged to the funds, i.e. paid directly out of the assets of the investors. The sums involved here are significant. In 2016, for example, US institutional investors paid about 6 billion USD in commissions to brokers, of which about 2 billion USD were for corporate access-related services, according to *The Wall Street Journal*.

MiFID 2, applicable as of January 2018, generally aims for increased transparency and improved consumer protection. Part of this is a massive push for unbundling, whereby asset managers have to pay separately for trading, research and corporate access. The rules with respect to corporate access are, however, still somewhat murky.

In the UK the regulator (FCA, September 2016) has made it clear that corporate access is not research and cannot be paid out of investor assets, and in the vast majority of cases will be considered an inducement, i.e. cannot be accepted by the asset manager from a broker for free. A similar rule has actually already been in place since 2014, but has been widely ignored by asset managers. In March 2017, however, the FCA stated that they expect this to change. Some market participants expect more stringent enforcement in the UK once MiFID 2 is in place.

The French regulator (AMF, September 2016 and February 2017), on the other hand, has taken a softer approach, indicating that under certain conditions corporate access might be considered research, i.e. can be paid out of investor assets. The AMF also stipulates that corporate access without research, so-called 'concierge services' might be provided for free 'if it were to meet the definition of a minor non-monetary benefit' (MNMB).

The French interpretation is, however, somewhat at odds with the European Securities and Markets Authority (ESMA), which is in charge of drafting the technical standards and ensuring consistent implementation across the European Union. The ESMA regularly updates its Q&A document on this topic, with the most recent update from 4 April 2017 now including a page specifically on corporate access. The ESMA's stance on corporate access can currently be summarised as follows (including some direct quotes from the ESMA Q&A document):

1. Corporate access 'does not appear to be research'. If it is not research it cannot be paid out of client assets.
2. The ESMA expects the asset manager to 'carefully assess' whether corporate access services facilitated by a broker are 'material benefits' or qualify as a minor non-monetary benefit (MNMB). Acceptance of free corporate access services provided by a broker is only possible if it is considered a MNMB.

3. The asset manager might also treat corporate access provided by a broker as a commercial service. In that case, however, the asset manager needs to 'pay for it appropriately from its own resources'. The broker has to price the service 'at commercial levels'.
4. Corporate access facilitated by the issuer's investor relations department, or by a third party that has no conflict of interest, and which is paid for by the issuer might be considered a MNMB. In that case asset managers can accept free corporate access.

Topics relating to unbundling, equity research and corporate access are not yet part of the upcoming Swiss regulation that covers MiFID 2-relevant topics (FINIG, FIDLEG). Nonetheless, even if the implementation of the relevant MiFID 2 rules in Switzerland is not expected before 2019, the spill-over to Switzerland will be swift, driven by large international asset managers that implement uniform compliance standards across the group, and will be felt long before the actual implementation.

For asset managers this uncertainty is inconvenient, but January 2018 is fast approaching and some decisions are still to be made. The following table illustrates the approaches that are currently being applied and the associated benefits and problems:

- Today**
- Asset Manager pays the Broker for providing Corporate Access via client assets, either directly via trades or cheque (via CSA).
 - Broker organizes the meetings and pays for on-ground logistics

	(1) AM pays out of own P&L	(2) AM pays via CSA/RPA	(3) AM uses 'free meetings' from brokers	(4) AM accepts 'free meetings' from corporates
	AM uses its own resources (i.e. the fees he has received from clients to manage the assets) to pay for Corporate Access. So far mainly applied by UK asset managers	AM implements CSAs (commission sharing agreement) with brokers. CSA feeds RPA (Research Payment Account). RPA is used to pay for corporate access	AM accepts 'free meetings' from broker, no matter if AM has business relationship with broker. Currently most widely used solution if AM has made changes related to MiFID 2.	AM accepts 'free meetings' from the company (issuer) or via intermediaries (platforms, IR advisory firms) but paid for by the issuer. Approach rarely used so far.
Future/MiFID 2	<ul style="list-style-type: none"> • Simple • Transparent • Does not trigger additional admin or compliance costs (one-time and/or recurring) 	<ul style="list-style-type: none"> • Allows to continue to pay brokers for corporate access out of client assets • Protects profitability of AM 	<ul style="list-style-type: none"> • Simple • Transparent • Might even have a beneficial impact on profitability 	<ul style="list-style-type: none"> • Simple • Transparent • Fully MiFID2 compliant • Might even have a beneficial impact on profitability
	<ul style="list-style-type: none"> • MiFID 2 compliant • In order to protect profitability nominal prices for clients need to be increased, i.e. an optical price increase (even if TER stable or slightly lower) • If prices cannot be increased this has a negative impact on profitability 	<ul style="list-style-type: none"> • Does not work if UK approach prevails, requires prevailing of the French approach. • Requires that AM also pays the broker for research • Requires additional processes to make sure services paid benefit the investors (i.e. more one-time and recurring admin and compliance costs) 	<ul style="list-style-type: none"> • Does not work if UK approach prevails, requires prevailing of the French approach • Still requires that compliance of AM labels 'free corporate access' a 'minor non-monetary benefit' (MNMB) This implies issuer time not valuable resource, rather treated like cheap lunch / hospitality 	<ul style="list-style-type: none"> • Might be met by initial resistance by corporates (issuers) who will have to do more work, need more budget • Might be met by resistance from brokers as it completely wipes out revenues from corporate access if approach applied by a sizeable minority only

With respect to the status of implementation in Switzerland, considerable work has been done by the major players already (who are generally aiming for MiFID compliance in Switzerland in January 2018 as well). In many cases, the mid-sized players have not spent a lot of work on this and have some catching up to do. In the end, even smaller players without fully-fledged European operations that have thus far applied a 'wait and see' approach will probably be forced to deal with MiFID 2 if they are selling their products into the

European Union, i.e. if their clients are subject to MiFID 2.

With respect to the approach applied, a combination of (3) accepting 'free meetings from brokers' and (4) accepting free meetings from issuers and non-broker intermediaries paid for by the issuers currently seem to be the favourite options adopted by the large asset managers. Of course, this makes sense as it is cheap, fast and simple, and the supply of 'issuer-sponsored roadshows' is still very limited. From a compliance

perspective and considering the April ESMA update, it is, however, questionable whether systematically accepting 'free meetings' from brokers is a sustainable solution. We will probably get more clarification on that this summer, as the deadline for transposing MiFID 2 into the national law of the Member States is 3 July 2017.