

SIFMA Response to the European Commission Consultation on a Code of Conduct for Interest Representatives

The Securities Industry and Financial Markets Association (SIFMA) is pleased to respond to the European Commission (EC) consultation on a Code of Conduct for Interest Representatives.

SIFMA (the result of a merger between the Bond Market Association and the Securities Industry Association) brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA represents its members locally and globally. It has offices in London, New York, Washington DC, and Hong Kong. The European Securities Forum (ESF), the European High Yield Association (EHYA) and the European Primary Dealers Association (EPDA) are affiliated to and operate as divisions of SIFMA (Europe). All references to SIFMA should therefore be understood as including the ESF, EHYA and EPDA.

General Comments

SIFMA is generally comfortable with the Scope, 'Principles' and 'Rules' of the draft Code of Conduct but would like to make a number of suggestions to clarify the obligations of the Code. However, we are less comfortable with some of the 'Other Provisions' linked to the Code, notably aspects of the registration scheme and suggest that the EC consult further on these issues.

Scope

We believe that the definition of 'interest representation' is overly broad, apparently capturing anyone who interacts with the European institutions in any way. We are also unclear on whether the Code is limited to activities vis-à-vis the EC or all the European institutions. Here, our preference for a 'one-stop-shop' that covers all institutions.

Principles

We support and have no specific comments on the principles of openness, transparency, honesty and integrity with which interest representatives are expected to comply. Referring to the impartiality rules governing the Members of the Commission and the staff of the European institutions, we also support the statement that responsibility for complying with those rules rests entirely with those individuals. Nevertheless, recognising the importance of *all* stakeholders knowing and understanding the rules, we suggest it might be useful to have the rules clarified (e.g. on reimbursing travel costs where EC officials are invited to speak).

Rules

1: Interest Representatives shall identify themselves by name and organisation.

We believe the Code should make clear that it applies to the trade association or member firm concerned and not to the individual employees of either. Subscribing trade associations and members should in turn use reasonable endeavours to ensure that their staff comply with the requirements of the Code.

2: Interest Representatives shall declare the clients and the interests they represent.

We suggest the deletion of the reference to 'clients' which is not relevant to trade associations or their member firms. It should be sufficient for a trade association to disclose the type of business carried on by its members. In most cases, it would also be impractical to list all members (bearing in mind the large and frequently changing membership of many associations and especially in the context of face to face meetings and telephone calls). There should be no need to make any specific declaration where the information about the interests represented by the association is already publicly disclosed, e.g. via the association's website. In the case of member firms it should be sufficient to disclose the name of the organisation represented.

3: Interest Representatives shall ensure that information provided to the EU institutions is accurate, complete and up-to-date to the best of their knowledge.

We believe that the absolute terms in which the current wording is expressed is inappropriate and suggest the following alternative wording: '...make reasonable endeavours to ensure that information provided to the EU institutions is accurate, up-to-date and not misleading'.

4: Interest Representatives shall not obtain or try to obtain information dishonestly from the EU institutions.

We believe this obligation could be made clearer and suggest instead: '...not seek to deceive EU institutions in order to obtain information that is not in the public domain'.

5: Interest Representatives shall not induce EU officials to contravene standards of behaviour applicable to him or her.

We are uncertain as to the exact standards of behaviour applicable to EU officials and do not believe that interest representatives can be held responsible for the behaviour of staff and officials or for the interpretation of internal rules. We therefore suggest the obligation instead focus on the impartiality standards of the Treaty and Staff Regulations as referred to in the Principles section of the draft Code. We propose: 'Interest Representatives shall not make gifts to staff or officials of the EU institutions that the Interest Representative knows that the recipient is prohibited from accepting under the rules of the EU institution concerned'.

6. Interest Representatives shall if employing former EU officials, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

We support this rule.

Other Provisions

Registration: Registration implies the acceptance of this Code.

We consider that registration also entails other obligations, including financial disclosure requirements (outlined in the EC's 'European Transparency Initiative' Green Paper of May 2006). In this context we believe that trade associations should be able to choose to disclose their overall budget and breakdown of main source of funding rather than estimating the cost associated with the direct lobbying of EU institutions, i.e. offer trade associations the choice between being treated in the same manner as think tanks or in-house lobbyists. SIFMA's work involves lobbying other international bodies, and Member States and other national authorities as well as EU institutions and it would not be practicable for any more than a rough estimate to be given. We would expect the same considerations would arise in relation to the in-house lobbying activities of our member firms.

Breaches of the Code: Breaches of the rules may lead to suspension or exclusion from the Register

The EC should clarify who would take a decision to expel a registrant. We also believe that there should be an opportunity to appeal such a decision. Moreover, suspension or exclusion from the register should not be the only sanction available: alternatives could include censure or written warning.

Complaints: Signatories should be aware that the citizens have the possibility to lodge a complaint about a suspected breach of the rules set out in the Code

We believe that the EC should set out a formal procedure for dealing with complaints about interest representatives. Given the possibility of bogus complaints or complaints from persons without a legitimate interest, only complaints from those with a legitimate interest should lead to sanctions being taken.

Publications of contributions and other documents: contributions [of interest representatives] to public consultations will be published on the internet together with the identity of the contributor, unless the contributor objects to publication of the personal data on grounds that such publication would harm his or her legitimate interests.

We are unclear why the procedures for public consultations are covered by the Code which we think should concern only the obligations of interest representatives not the procedures of the EU institutions. The obligation is moreover far too limited. Consultation practices should acknowledge that it is legitimate for those submitting responses to request confidentiality for their submissions. The freedom of information legislation in the EU acknowledges that commercial confidentiality is a possible (if not determinative) ground for withholding material.