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Technical Advice on the future Directive on Financial Instrument Markets, with respect to the EC mandate for comments by March 30th 2004 from ANCDGP (Association Nationale des Conseils Diplômés en Gestion de Patrimoine -France)

The following are made in this context and represent the best understanding of the procedure by its contributor. It should not be regarded as a critic of the procedure, contents of the draft Directive or any other related appreciation and should not be reproduced or commented outside this context without formal authorisation of ANCDGP representatives.

The aim of the comments is therefore solely to focus on the French scene at the time of writing, pointing out that IFA's await locally the decrees regarding implementation of the law passed on August 1st 2003 regarding financial security.

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About 3/ Article 13:

*As an important foreword, it should be noted that the field of ANCDGP consists both of **financial and legal** guides, advisers and planners, not investment firms; hence the comments will be attached to the providing of advisory services, be it legal or financial to make it short, not in the name of holders of client's money and investing it under the adviser's direct management control.*
Indeed, portfolio management is out of ANCDGP's scope, as law outsources this for its members.
Finally, ANCDGP's vision is clearly across the board, for it speaks in the name of independent advisers (guides, IFA or planners) as well as employees of financial entities (wage owners or tied agents). In this respect the term "adviser" will be used for all concerned, be them employee, guide, adviser or planner.

Let also be mentioned that ANCDGP is the official representative body for wealth management graduates.

Therefore article 13 stresses both on "investment services" in which we read advisory services and "investment activities" in which we read sales.

*

3.1.1.
(1) In this context, compliance is limited by French law to a strict distinction of advice fee sales and product commission sales. Nonetheless, both activities can be performed by the same entity; provided that the client is clearly notified of the end of the fee based service, and of the start of the commission only sales talk. The above mentioned pending decrees will specify the rules and sanctions related to a blurred frontier between the two, but it is worth noting that the information obligations towards the final client are roughly equivalent in both cases, to maximize client's protection. Strict "Chinese walls" rules will therefore be difficult to enact, since the same person will be authorized to perform both activities, as to provide the same product information.

(2) The law clearly identifies who will be responsible, and passes on control to "platforms" operated by the professional associations (4 to date) which exist, to monitor this. A single list of IFA's will be drafted under the responsibility of Banque de France, freely available to the customer.

(3) This is mostly non relevant as advisers and sales do not manage client's money, and are mostly not prone to insider's trading. Moreover, clients often require that the adviser is a client himself of the proposed investment, as a collateral security to their own investment.

(4) It is therefore unlikely that there is a conflict of interest in this field, since commissions' level and performance consequences will also have to be explained to the client.

3.1.2
(1) A precise client's file minimum contents will have to be edited by decree specifications or through the "platforms" to ensure that:

- the client is fully aware of the degree of risk taken
- the adviser has explained this and is fully conversant with this information

(2) Since investment money is always written in the name of the investment firm, the advisor's accounting is not concerned.

(3) Any other procedure is fraud and eligible for legal penal proceedings

(4) Both client and adviser will have to sign a declaration of understanding the product and the investment notice.

(5) The record will be both in the hand of the investment firm and the advisor, and regular updates will be made to ensure that the investment still corresponds to the needs of the client. Furthermore there will be a lag delay before effective investment, so that the customer can opt out with no financial harm at inception.

3.1.3
(1) In case of outsourcing by the investment firm, the adviser will have to be informed as well as the client. The question is to know whether the simple posting of the information on a web site is enough, or if formal notice of both is required. ANCDGP has clearly opted for the latter.

(2) There should be a reasonable delay between decision and act to enable the adviser and the client to decide to opt out, if they so wish in front of unexpected outsourcing

(3) This should be especially in force in the case of a later limiting outsourcing or access to funds following initial subscription. This is already the case when mutual funds (SICAV or FCP) merge.

3.1.4
(1) This is outside the scope of advisory services. However, should it impact on the future relations between adviser and product provider, compliance is not enough. A change of policy regarding an IFA can result in taking back his sales code. In that respect, his client could loose information on his investment. Opting out should therefore be available.

(2) In this specific case, the change of investment support, and it future possible underperformance compared to the one the IFA was forced to abandon, cannot put the blame on the IFA.

(3) Sourcing the chain of these measures should be permanent.

3.1.5
(1) By essence this is not applicable to the adviser. However the procedures should be made available to him, as to ensure him of the safe keeping and accounting of his client's investment money.

(2) It should be noted that, as in this paragraph, banks and financial institutions in France are not within the scope of the new 01/08/03 law, having excluded them from its application.

(3) This will normally be done through the above-mentioned "platform" norms, once in place.

3.2
(1) Minimum quotas of investment per year, different levels of commissions for equivalent products provide opportunities for oriented sales, as to keeping a status or financing the adviser's operations

(2) Therefore investment firms should treat on an equal footing all sales forces, not withstanding bonuses if appropriate with larger providers. On the other hand irregular production should not lead to withdrawing of sales agreement.

3.3.1
(1) Marketing should be accompanied, when appropriate, with code of ethics and deontology of both the provider and the adviser, either internal as agreed by referent trade bodies, or general from the relevant trade bodies as adhered to by both the provider and the adviser.

(2) In particular, these could be printed at the back of advertising, on the Internet pages …

3.3.2
(1) Again this is related to both the pending decrees and the code of practise of the various investment firms' professional bodies.

(2) The disclosure of a full prospectus is not fully satisfactory. Consequently, clear projections of investment strategies on definitive timeframes conversant with the product, and monitored and actualised periodically, are a welcome addition to both the adviser and the client, to allow them to check on a regular basis that the initial investment is, or not, in tracks.

(3) Proper execution is confirmed by the depository firm. When both functions are combined in the same entity, this is certainly a problem.

(4) Again transparency is in the law, and all should abide to it. Distortion of competition is however experienced with banks that do not have to abide to these rules.

(5) Departure of investment managers in the case of mutual funds (OPCVM) especially should be widely updated on continuous basis since it will most likely affect the performance of the underlying investments.

3.3.3
It is of the responsibility of both the investment firm and the adviser to keep track of the real whereabouts of the clients, as well as his continuous acceptance of the risk associated with his investment. Lack of proper location of client is a clear sign of loss of information flow and should be sanctioned jointly.

3.3.4
The ownership of the client relation lies with the adviser. Therefore, beside legal requirements to be ascertained, no investment firm should communicate with an adviser's client without formal consent.

3.4
3.4.1
Fiscal law distinguishes between professional and retail clients. The latter are more protected by nature, but the disclosure of points mentioned in this § relate to the relations between the adviser and the final client, provided that the investment firm does not discriminate between type of clients and gives adequate information to the adviser.

3.4.2
In case of trading venues, direct relation with end clients should be reported to the adviser in due course.

3.4.3
Direct advertising should be consistent and not detrimental to development through financial advisers.

3.4.4
Again there should be a deferred period for changes, allowing end clients to opt out if so wished, following professional advice through thorough information provided to his adviser

3.5
(1) Orders have to be processed as soon as received, be it by postal mail, fax or e@mail as soon as the appropriate control procedures are fulfilled

(2) According to mandates given to portfolio managers, or market deviation from normal trading such as the 11th of September syndrome, due diligence should be applied as to check whether the order is still valid under abnormal conditions. Here too, liaison with the adviser is crucial.

3.6

(1) A duplicate of a client's orders execution should be forwarded at the same time as to the client to the adviser so that he can execute his control of compliance in line with his client's directives.

(2) Securities codes should clearly indicate the type of market they trade in. The ISIN N° is not enough for foreign eyes especially.

(3) Portfolio reports and valuations should follow trades on a regular basis, and provide valuation perspective over time. To this effect performance should be both factual and on a weighted base, to alleviate entry or depletion of the size of the portfolio, as to ascertain the real value of the traded securities decisions, be them client or portfolio manager based.

3.7

3.7.1

(1) Market making quotes are of no interest to the retail trade. Indication of size and price monitored on professional screens could be transmitted to exchange and market quotation public screens. However since no access is allowed for retail, only size could affect trades, in reducing drastically the liquidity of a security for instance. In any case this information cannot be relayed live to the public; hence it is of limited impact to transparency.

(2) Therefore, only large orders should be showed, but also trades by operators moving into the disclosure owning limits should gain full publicity irrespective of the fact that they are made in full name or through an investment bank, for they may be advanced signs of major capital changes. In this respect all Directors trades should also be made public instantly, as proprietary trades for market makers.

(3) the French obligation for UCITS subscription, of the client's sales cancellation option lasting a full week, can be counter productive to the client's final interest in case of a proposed change of ownership, and can cause legal problems as to ascertain the real ownership date : order or cancellation end date.

3.7.2

(1) As stated already, any indication of change of ownership holdings by Directors, or size amounts traded by institutional investors, should be made public without delay both to client and adviser.

(2) Referring to UCITS, the question rises of level, depending on the weighting of the respective security in the global portfolio of the mutual fund. A real difficulty lies there. Furthermore, on a reverse viewpoint, the move of a UCIT in a company must be clarified as of the interest behind: a genuine decision from the manager of a mutual fund or a move by an institutional investor through the scapegoat and smoke of the UCIT?

3.7.3

(1) OTC transactions are allowed, and in some cases are legal requirements for specific investment vehicles in France (DSK funds, and FCPI). Be it i, ii, or iii these legal vehicles provide adequate transparency. Also on unlisted or non quoted securities, OTC trades are the only way to eradicate a "left over" share of a dormant company, which, though no longer active, have not been duly cancelled by their owners. In most cases there are no capital gains at stake.

(2) On the other hand, properly valued companies holdings should not be detrimental to minority owners, and a "fair value institute" may be created to be used in this respect.

3.8

(1) the main difficulty is not in bringing a new security to the market, but insuring investors that it will not go bust once this done. Warnings should be made on a regular basis, and companies should be monitored at random, especially newcomers to the markets.

(2) To this aim a special corps of chartered accountants and auditors should be able to move forward in the crucial six months between balance sheet accounts and public AGM disclosure. Indeed companies can go bust in

the week following the disclosure in June of their prior December figures. It cannot provide for confidence from would be investors in the same size or respective sector companies.

(3) Regulators should also cooperate as to avoid “Chinese walls” between Community’s markets in this respect.

3.9
This provision is a development of previous §. Former Directors should not be able to seek refuge abroad and duplicate a “cowboy’s” attitude regarding company’s management and shareholder’s money. It is equally true from failed fund managers.

3.10
Besides money laundering exchange of information, a prerequisite, fiscal cooperation is also an avenue to explore in this respect of information’s exchange. All market control authorities should cooperate to provide adequate protection, European wide, to the retail client. Any suspicion regarding the actions of any company suitable for investment should be available through one “emergency” N° in intelligible language and in national tongue format.

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