

**ESMA – European Securities and
Markets Authority**
103, rue de Grenelle
75007 Paris

Ref: ESMA/2012/570

Milan, 6 December 2012

Re: “Guidelines on remuneration policies and practices (MiFID)”

ANASF (Associazione nazionale promotori finanziari) is the only category association that represents only tied agents and counts over 12,000 members. The Association has been a member of the FECIF, Federation of Financial Advisors and Financial Intermediaries for over ten years.

ANASF has carefully studied the Guidelines proposed by your Authority and appreciates the aims. Their objective is that of guaranteeing a better, consistent application of the MiFID provisions on the management of existing conflicts of interest and the code of conduct, as regards remuneration. The ESMA Guidelines refer to the legal provisions already in force in our country, i.e. Banca d'Italia Regulation of 30 March 2011¹ (implementing Directive CRD III in Italy) on remuneration and incentive policies and practices in banks and banking groups (extended to the Sim by the Joint Banca d'Italia/Consob Regulation of 25 July 2012²) and Consob provisions contained in the information obligations of supervised bodies³ (Consob Resolution No 17297 of 28/04/2010) that set out, amongst other things, regulations for communicating complaints and identifying and controlling the work of relevant persons.

The above-mentioned Banca d'Italia provisions contain both internal and external business network remuneration principles, setting out in particular that incentive systems cannot be based solely on business objectives but must be inspired by criteria of correctness in relations with customers, limiting legal and reputational risks, safeguarding and generation of customer loyalty, respecting legal, regulatory and self-discipline regulations. Moreover, they are set within the wider normative system that includes,

¹ http://www.bancaditalia.it/vigilanza/normativa/norm_bi/disposizioni-vig/politiche-prassi-remunerazione

² http://www.consob.it/main/documenti/bollettino2012/provv_bi_consob_20120725.htm

³ <http://www.consob.it/main/documenti/Regolamentazione/normativa/reg17297.htm>

amongst other things, Consob regulations on correctness and transparency in the provision of services and investment activities and managing conflicts of interest.

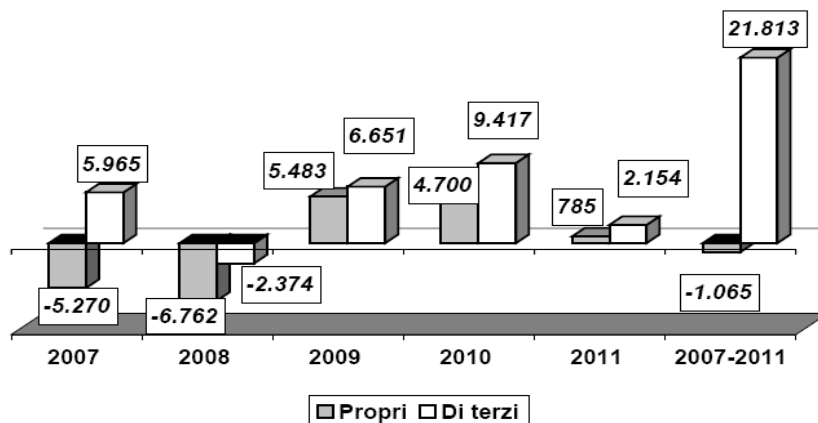
Therefore, we agree with your Authority that quality criteria, such as compliance of the relevant person with legal requirements and internal procedures, as well as quantitative criteria, must be used in planning remuneration between the fixed and variable components, favouring the fixed component where possible.

As regards tied agents, the Italian supervisory Authorities has set out that their remuneration must be divided between a “recurrent” component, representing the more ordinary and stable part of the remuneration, and a “non-recurrent” component that acts, instead, as an incentive (linked for example to the increase in net collection volumes, launch of new products etc.). The “recurrent” part is equivalent to the fixed part of the remuneration whereas the “non-recurrent” component is the variable part and, therefore, subject to certain prudential safeguards.

A tied agent’s activity is mainly carried out outside the office and therefore has special characteristics, different from those of employees. In asset management, prevail in investment advice service, products of third parties with respect to group membership network of tied agents, confirming the distinct approach of the sector to adopting open architectures in distribution models.

In the five years 2007-2011, medium term analyses highlighted the net predisposition of tied agent networks to distribute third party product, with net flows of resources equal to 21.8 billion euros, compared to net yields of 1.1 billion euros. (Assoreti report 2011).

Raccolta netta in prodotti finanziari e servizi d’investimento propri e di terzi



I dati dal 2007 al 2009 si riferiscono a campioni di società con rappresentatività pari al 99,6% del patrimonio in prodotti finanziari e servizi di investimento del risparmio gestito.

Therefore remuneration policies must take account of these specific aspects of tied agents.

In discussing the Guidelines proposed by your Authority we would like to make the following comments.

Q1 Do you agree that firm's remuneration policies and practices should be aligned with effective conflicts of interest management duties and conduct of business risk management obligations so as not to create incentives that may lead relevant persons to favour their own interest, or the firm's interests, to the potential detriment of clients? Please also state the reasons for your answer.

Yes, we agree with your Authority with reference to the above.

Q2 Do you agree that, when designing remuneration policies and practices, firms should take into account factors such as the role performed by relevant persons, the type of products offered, and the methods of distribution? Please also state the reasons for your answer.

Yes, we agree with your Authority that when designing remuneration policies and practices, firms should take into account various factors, acknowledging the added value of some compared to others, in particular of investment advice and long term customer assistance.

Q3 Do you agree that when designing remuneration policies and practices firms should ensure that the fixed and variable components of the total remuneration are appropriately balanced?

Q4 Do you agree that the ratio between the fixed and variable components of remuneration should therefore be appropriate in order to take into account the interests of the clients of the firm? Please also state the reasons for your answer.

Yes, we agree. In determining the balance and ratio between the two remuneration components, the fixed component should prevail over the variable component.

Q5 Do you agree that the performance of relevant persons should take account of non-financial (such as compliance with regulation and internal rules, market conduct standards, fair treatment of clients etc.), as well as financial, criteria? Please also state the reasons for your answer.

Yes, we agree with your Authority that non-financial criteria that take into account conduct between subjects should be borne in mind when assessing the performance of relevant subjects. Tied agent activities are regulated by general rules, apart from the context (advice and placement service etc.) in which the professional works. As defined in the Anasf Guidelines on relations with the customer, validated by Consob on 19 November 2009⁴, the tied agent must act diligently, correctly and transparently in

⁴ http://www.consob.it/main/aree/novita/linee_guida_anasf.htm;

carrying out their activities. Tied agent must observe the legal provisions and regulations governing intermediary activities, as well as respect Consob circulars and regulations, level three (adopted by the component national, community and international Authorities) and level four guidelines, as well as those regulations contained in the ethical self-discipline code of this Association published in 1999⁵ that all members must adhere to. Moreover, tied agents must know, observe and apply internal procedures and codes adopted by the intermediary and attend periodic refresher courses. Moreover, the Anasf ethical self-discipline code sets out that the tied agent's duty to work in the interest of the intermediary must meet the limit of the client's interest. Therefore, tied agents must refuse initiatives and behaviours, even though requested or suggested by the intermediary, that are in contrast with the client's needs. Therefore, Anasf is willing to carry out investigations into the commercial policies of intermediaries, using a sample of its members, and inform the supervisory Body of any reports of negative behaviours on the part of intermediaries to the detriment of client interests (see reply to question No 11).

The above-mentioned code of conduct, that includes only a few of the regulations followed by tied agents, must therefore be borne in mind in assessing the performance of relevant subjects from a non-financial criteria point of view.

Q6 Do you agree that the design of remuneration policies and practices should be approved by senior management or, where appropriate, the supervisory function after taking advice from the compliance function? Please also state the reasons for your answer.

Q7 Do you agree that senior management should be responsible for the implementation of remuneration policies and practices, and for preventing and dealing with any the risks that remuneration policies and practices can create? Please also state the reasons for your answer.

Yes, we agree with your Authority. However we do believe that the relevant subjects should also be involved in designing remuneration policies and practices, or at least be consulted, so as to adopt practices that meet the most favour. The proposal also includes an intermediary control that can be carried out through tied agents.

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Examples of good practice:

- The variable part of the remuneration paid out is calculated and awarded on a linear basis rather than being dependent on meeting an 'all or nothing' target. In some cases, the firm decides to pay out the variable remuneration in several tranches over an appropriate time period, in order to adjust for and take into account the long-term results.

- A firm has fundamentally changed the ratio between fixed and variable income. The variable component of the remuneration has been considerably reduced and the fixed part of the income has

⁵ <http://www.anasf.it/index.php?go=54>

been increased. The new ratio more closely reflects the desired conduct of the employees to act in the best interests of clients.

- When offering additional incentive payments for reaching required levels of sales, a firm takes into account whether the relevant person meets the firm's quality standards or standards of compliance - such as, rates of business retention (or lapses); whether it upholds any complaints about advice etc.

The three best practices indicated must be integrated to bear in mind the two profiles with main characteristics, i.e. those of novice tied agents and valorising the portfolio of tied agents in activity.

New Best practice

- The firm provides only for newbies, those that have worked for less than 3 years, the prevalence of the variable remuneration component with respect to the fixed component and additional incentives

Anasf proposes this practice as, when they start work, the remuneration of new persons consists mainly of a variable component that will become fixed as time passes (management fee).

This practice is indicated to favour the younger ones in particular. Statistical data shows that, in recent years, the reduction in those registered with the Register of Tied agents involves mainly people under 30 and between 30 and 40 who have fallen by around 17% and 15% respectively since 2010. This picture confirms the gradual "ageing" process of the population of the Tied Agent Register due to the difficulty for youngsters to remain in the market - 78% of tied agents are over 40. Without identifying best practice, we risk creating an insurmountable barrier to entry to the market and strangulation of the pool of professionals, with only the three above.

Fasce d'età	2009	2010	2011	Δ%(1)	
< 30 anni	1.892	1.497	1.247	-16,7%	▼
30 - 40 anni	14.985	12.625	10.729	-15,0%	▼
40 - 50 anni	22.508	21.976	21.512	-2,1%	▼
50 - 65 anni	17.791	18.344	18.883	2,9%	▲
> 65 anni	1.894	1.974	2.210	12,0%	▲
Totale	59.070	56.416	54.581	-3,3%	▼

(1) Variazione rispetto al 2010.

Source: APF Annual Report - June 2012

New Best practice

- The variable part of the remuneration paid is determined and paid on a linear basis and does not depend on achieving a target or not. At the end of the relationship, the firm pays the relevant person an indemnity for the goodwill of the profession, in acknowledgment of their professionalism, i.e. the creation of value in time by the relevant person.

Anasf proposes this practice because it believes relevant subjects should be rewarded for having created added value for the firm during their working relationship, having significantly developed existing business.

Q8 Do you agree that the organisational measures adopted for the launch of new products or services should take into account the remuneration policies and practices and the risks that the new products or services may pose? Please also state the reasons for your answer.

Yes, we agree with you.

Q9 Do you agree that the process for assessing whether the remuneration features related to the distribution of new products or services comply with the firm's remuneration policies and practices should be appropriately documented by firms? Please also state the reasons for your answer.

Yes, we agree with you.

Q10 Do you agree that firms should make use of management information to identify where potential conduct of business and conflict of interest risks might be occurring as a result of specific features in the remuneration policies and practices, and take corrective action as appropriate? Please also state the reasons for your answer.

Yes, we agree with you.

Q11 Do you agree that firms should set up controls on the implementation of their remuneration policies and practices to ensure compliance with the MiFID conflicts of interest and conduct of business requirements, and that these controls should include assessing the quality of the service provided to the client? Please also state the reasons for your answer.

On this point, we would like to highlight a paradox. In reading the text it would seem that those subjected to checks on the application of best practices and the incentives set out by the EU Directives (intermediaries) are the same as those that set up the checks on tied agents, in particular their application of the said regulations.

These persons (intermediaries) must check whether the persons controlled (tied agents) comply with the regulations.

What happens if the tied agents comply with the said regulations but the intermediaries do not? How can we really safeguard all clients, in particular retail clients?

The proposal is that of combining the classical top-down approach with a new bottom-up one. Tied agents would not only be a "controlled" subject but also definitively assume an "active" role in checking the degree of satisfaction resulting from the effective application of the best practices, with the tied assessing the intermediary they work for.

Article 4 of the MIFID Directive sets out that tied agent exercise their professional activity under the Authority's control and intermediary's responsibility. Cross-checks between the different players on the various regulations relating to the distribution of financial services could lead to a more compliant governance, favouring retail clients, as

set out in the principles of the MiFID Directive. The Supervisory Authority may request, for example, the anonymous completion of a minimum questionnaire on company best practice in relation to them and therefore clients from a sample of tied agents chosen in annual rotation (e.g. the principle of the tenth/hundredth, calling tied agents 1, 11/101, 21/201, etc. in 2013, tied agents 2, 12/102, 22/202, etc. in 2014 working for the individual intermediary). As a result of the role, the tied agent is the most appropriate person to check satisfaction and report any unfair company practices on the part of the intermediary they work for.

Q12 Do you agree that the compliance function should be involved in the design process of remuneration policies and practices before they are applied to relevant staff? Please also state the reasons for your answer.

Yes, we agree with you.

Examples of good practice:

- *In order to assess whether its incentive schemes are appropriate, a firm undertakes a programme of contacting a sample of customers shortly after the completion of a sale involving a face-to-face sales process where they are not able to monitor recorded telephone sales conversations, so as to test if the sales person has acted honestly, fairly and professionally in accordance with the best interests of the client.*
- *Top earners and performers are recognised as of potentially higher risk and as a result additional scrutiny is given to them; and information such as previous compliance results, complaints or cancellations data is being used to direct compliance checking. The outputs have an impact on the de-sign/review of the remuneration policy and practices.*

Referring to the system for contacting and checking a sample of clients proposed in the first practice, we are aware of the possibility that firms can check a sample, or with other criteria, the work of tied agents, both because of their role in direct contact with clients, and their managerial role, even though we have reason to believe that an interview directly following a professional contact is not an effective and qualifying instrument, being at the same time both a unilateral assessment and potentially usable in an instrumental way.

Therefore, we believe that this system is not the most appropriate assessment tool since, as already mentioned in the reply to No 11, tied agents are not only controlled subjects but could also play an active role both on behalf the company they work for and as regards the degree of customer satisfaction (customer care).

The second practice poses the accent on persons with higher income and performance and therefore considered at risk and subject to more stringent controls. Despite understanding the reasons for this provision, and not being contrary to the necessary

checks, we would like to underline how this practice is sometimes based on prejudice. The degree of risk of a person is not only determined by their income and performance. These elements are often the sign of the greater skill and professionalism of these operators compared to others. Those with better performance as a result of good relationships and skills have been able to operate on the market and obtain excellent results due to their merits. Therefore, it would be hoped that checks be applied randomly irrespectively and equally on all persons, even those who do not achieve high levels of performance as, statistically, they created greater risks for clients.

Q13 Do you agree that it is difficult for a firm, in the situations illustrated above in Annex I, to demonstrate compliance with the relevant MiFID rules?

Accompanying document 1 lists a series of remuneration policies that are considered high risk, in particular highlighting certain business policies of brokers that can influence relevant persons. For example, cases where a company launches a new product or pushes a specific product and incentivises the relevant people to sell that specific product.

As regards these specific cases of high risk remuneration policies (group A and group B examples) although sharing the objectives, we think it is unfair *tout court* to invalidate the commercial policies of companies, taking it for granted that the promotion of a certain product must be absolutely contrary to the interest of clients, without checking the advantages and disadvantages of the product in each case. Some of the commercial policies can be aimed at promoting a certain financial instrument, created after careful and innovative financial analyses made only to improve the choice options available for clients and certainly in their interest (for example a new product with objective tax advantages).

On this point, we would like to present some examples:

Example 1. In November 2011, at the height of the Italian debt crisis, an Italian network proposed a unit-linked policy with maturity at 3/5 and 10 years (redeemable after 12 months had passed) with underlying BTP with the same maturity. In this case, the creation of this service-product had the twofold result of giving a sign of confidence to Italy and creating an opportunity to seize at the time when the risk/return ratio was clearly advantageous compared to well-paid risk (we should recall the spread of more than 600 base points).

Example 2. At the climax of the spread crisis, an Italian intermediary decided to place a new sector in one of his SICAVs, which could communicate with all the other sectors, that can be subscribed and settled daily (first listing 15/02/2012), which set out the exclusive investment in medium/long-term BTP as the underlying. The famous photo of Merkel and Sarkozy laughing, with the motto "he who laughs last, laughs best" and the background of the Italian flag, was used as a press campaign. The company also received various commendations and citations in French and German newspapers.

In the light of the above and the examples given, we are, therefore, convinced that it is mistaken to consider every commercial policy driving a product as necessarily negative, distinctions and appropriate further analyses must be made each time.

Q14 If you think some of these features may be compatible with MiFID rules, please describe which specific requirements (i.e. stronger controls, etc.) they should be subject to for each of (a), (b), (c) and (d) in Annex 1 above.

See answer to Question 13.

Please do not hesitate to contact us for any further information.

With kindest regards



The Chairman

Maurizio Bufi