

1 April 2005

Committee of European Securities Regulators

Dear Sir

2nd CONSULTATION PAPER ON THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

The following comments are made by the Joint Investment Business Committee on behalf of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland. They relate only to the consultation on the definition of investment advice.

Our view is that there is no need for generic advice to be regulated. Such advice is given in many situations and by many firms that are not investment firms. The key issue is that at the point when a transaction is made, the intending investor is covered by investor protection arrangements. In cases where the investor is reaching his own decision to purchase an investment, possibly after some generic advice has been received, the investment can only be purchased via an investment firm which will make the investor aware of the absence of such protections. this is a safeguard.

In our experience, investment firms will deal with the matters in article 19 at the outset of the relationship. Whether or not this information is acquired at the outset of the relationship does not matter. As the nature of the enquiry develops, the investment firm will obtain more information so as to judge suitability before making a specific recommendation.

In the examples given in the consultation paper we do not see particular issues arising that are not dealt with by our comments above. In the example of the implicit recommendation, if the client decides to purchase without a specific recommendation, the investment firm will have to declare the absence of investor protection. If an explicit recommendation is made then suitability will have to be considered.

If unsuitable generic advice is given, as the paper notes, the subsequent specific advice is covered by investor protection safeguards. In the final situation of generic advice not leading to specific advice, we agree with the comment that in most cases a specific transaction does go ahead. If the potential investor does not accept any specific advice but does make a transaction, the investment firm involved in the unadvised transaction will have to declare the absence of safeguards which is itself a safeguard.

While much of the above may suggest that there is little difference in the way that firms will deal with generic advice and that therefore it could be included in the definition of advice, we do not believe that this is a suitable approach. This is even more evident given the commentary about passporting in the consultation paper.

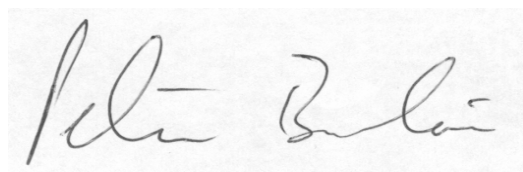


Our view is that the regulated activity is advising on the merits of buying a particular investment. There will be in many cases some introductory discussion that could be termed as generic advice. Such generic advice could also have been given by a wide range of persons who are not investment firms. It would be far too onerous and inappropriate to regulate that 'advice' and so it should not be regulated when given by an investment firm.

Finally, in our view, the definition itself with its reference to transactions points at something far more specific than generic advice.

Please contact Peter Burton at the Institute of Chartered Accountants in England and Wales (tel: 01908 546273, email peter.burton@icaew.co.uk) if you have any queries on this response.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Peter Burton', is shown on a light-colored background.

PP
P F Green
Chairman
Joint Investment Business Committee