



Association Luxembourgeoise des Fonds d'Investissement – Association of the Luxembourg Fund Industry

CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

Response to consultation paper regarding the definition of investment advice (CESR/05-164)

Luxembourg, April 4, 2005

The Association of the Luxembourg Fund industry (ALFI) is the representative body of the Luxembourg fund industry. Its membership includes funds as legal entities and professionals of the fund sector, among which depositary banks, fund administrations, transfer agents as well as asset managers. We therefore welcome the opportunity to comment on the above-mentioned consultation paper.

In particular, we would like to underline the following: in certain circumstances generic advice should in our view be subject to the same standards and regulations as specific investment advice, for example in cases where such advice is offered in the context of a specific portfolio or set of portfolios (asset allocation). The reasons for this are the following:

- From an investor point of view the fundamental decisions regarding asset allocation can have a greater impact on the overall performance of a portfolio than any single piece of advice on a specific stock or bond holding. There seems to be little benefit for an investor in regulating the small investment choices if more important choices are not covered under any form of protection or oversight.
- In practice it is often difficult to define the point at which advice becomes specific rather than generic, for example in cases where a fund provider advising on a general level suggests that a certain percentage of a client's portfolio should be invested in emerging markets while the provider has only one emerging market fund available.

With regard to best execution, we would also like to make the following comments:

ALFI broadly supports CESR's proposals. However there is already a significant amount of detail in the Level 1 text and in our view there is a limited need for Level 2 advice in this field. Therefore we are of the opinion that the details suggested in respect of disclosure to clients are too numerous and contain more data than clients actually wish to receive, especially in the context of a fund management activity. The maintenance effort required to keep such data up-to-date would also be totally disproportionate in comparison to the benefits of such proposals.

We would recommend that the issues of error correction and handling procedures be dealt with on appropriate level as well.

Finally, ALFI would insist on the need to recognize that at present there are a number of financial products which serve the same objectives from an investor's point of view but are subject to significantly different regulatory requirements. Fair competition and hence similar rules should be ensured in the future for all these products if one wants to avoid some financial intermediaries choosing less regulated investment products than investment funds.