

TO: CESR - Committee of European
Securities Regulators
11-13 Avenue de Friedland
75008 Paris

Ref: CESR/09-665

Milan, 14th December 2009

ANASF COMMENTS ON

“Understanding the definition of advice under MiFID”

Consultation Paper

ANASF (the National Association of Promotori Finanziari) is the only association which exclusively represents tied agents (promotori finanziari), and has more than 12.200 members. ANASF is pleased to have the opportunity to take part in the public consultation indicated, answering some of the questions brought up by the Committee.

III. Part 1: Does the service being offered constitute a recommendation?

Q.1. Do you have any comments on the distinction between the provision of personal recommendations and general information?

Anasf believes that the distinction highlighted in the consultation paper between general information and personal recommendations is well explained, including the clarification that the information may take on the nature of advice if the circumstances in which it is provided give it the strength of a recommendation and thus it is transposed by the saver. The Association therefore believes that CESR has stated clearly the distinction and no further explanation is necessary.

Q.2 Do you agree that the limitation that filtered information is “likely to be perceived by the investor as, assisting the person to make his own choice of product which has particular features which the person regards as important.” is a critical criterion for determining whether filtering questions constitutes „investment advice?

Yes, we agree with CESR. Even in this case is fundamental the perception of the saver, who may believe that the information received and filtered can be considered as a recommendation. It is necessary to evaluate on a case by case basis the various factors in order to determine whether the information provided constitutes investment advice.

IV. Part 2: Is the recommendation in relation to one or more transactions in financial instruments?

Q.3. Do you believe the distinction between general recommendations/generic advice and investment advice is sufficiently clear? Do you have examples of types of advice where the designation is unclear?

Yes, we believe that the distinction between general advice and investment advice as set out by MiFID, and then clarified by CESR communications (including the consultation in question), is accurate. Although, in our opinion, it would be preferable that MiFID had included in the definition of investment advice the general advice (particularly asset allocation) for the important value of this service. We want to take this opportunity to stress that Anasf wishes a review of the Mifid definition of investment advice in that sense.

The Association also points out that even in the distinction between investment advice and general advice, the boundaries may, in some circumstances, be very blurred, so it is necessary to pay special attention and be meticulous in the evaluation.

V. Part 3a: Is the recommendation presented as suitable?

Q.4. Is there sufficient clarity as to when an implicit recommendation could be considered as investment advice? If not, what further clarification do you think is necessary?

Yes, in our opinion there is sufficient clarity. It's the result that counts, or the perception of the saver compared to the fact that he received a sound recommendation.

VI. Part 3b: Is the recommendation based on a consideration of the person's circumstances?

Q.5. Are the circumstances where „it is clear the firm is making a personal recommendation sufficiently clear”? Would further clarification be helpful?

Yes, we believe that Cesr position is sufficiently clear. We do not see a need for further clarification.

Q.6. Are there other criteria you believe should be considered when determining whether messages to multiple clients constitute investment advice?

No, we believe that the criteria identified by the Committee are sufficient.

VIII. Part 5a: Is the recommendation made to a person in his capacity as an investor or potential investor?

Q.7. What information would be helpful to assist in determining whether or not what firms provide constitutes investment advice or corporate finance advice?

We believe the distinction is possible only reasoning by exclusion and distinguishing clearly the recipients of the service, giving evidence to his object. If it is not specifically a recommendation of a specific financial instrument it isn't investment advice.

Please do not hesitate to contact us for any clarification.

With kindest regards



The Chairman

Elio Conti Nibali