



Aviva Investors' Response to CESR's consultation paper on understanding the Definition of Advice under MiFID

Aviva plc is the world's fifth-largest¹ insurance group, the largest insurance services provider in the UK and is one of the leading providers of life and pension products in Europe and is actively growing its long-term savings businesses in Asia Pacific and the USA. Aviva's main business activities are long-term savings, fund management and general insurance.

Aviva Investors is the global asset management business of Aviva plc, managing assets in excess of £222² billion across a range of funds and asset classes. The business operates under a single brand with 1,430 employees in 20 locations across North America, United Kingdom, Continental Europe, and Asia Pacific.

Please note that we ask for our submission to remain private and therefore, not be made available for public inspection.

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

As the distinction between the provision between personal recommendations and general information is often qualitative, as described in paragraph 15, we support the inclusion of as many examples as possible in order that clients receive the correct level of protection. Within Aviva Investors, we have tried to assist the business by producing, for internal purposes only, a list of examples of what is advice and what isn't. This document is attached in Annex One and would support CESR in developing its own lists of examples.

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'?

We agree with CESR's interpretation regarding perception. It would be helpful for CESR to confirm that where such filtering leads to only one product option, this does not necessarily mean that this is investment advice, but that all factors, where relevant, covered in paragraph 22 still need to be considered.

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 the distinction between general recommendations/generic advice and investment advice is sufficiently clear. We do not have any examples of types of advice where the designation is unclear.

¹ Based on gross worldwide premiums for the year ended 31 December 2008

² As at 30 June 2009



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?

We think further clarity (as to when an implicit recommendation could be considered as investment advice) could be given by providing further examples. This would ensure greater harmonisation of interpretation.

We suggest the following examples:

Investment advice: A product provider informs a prospect that they should invest in a specific and complex fund type which exactly describes a fund in the provider's range. For example, you should invest in a defined returns fund that offers the potential for a return of 32% on your initial investment at the end of a four year period where the counterpart holds at least an 'A' rating.

Not investment advice: A product provider informs a prospect that it would be a good time to invest in real estate funds. The product provider has one real estate fund in its range but does not comment on this or provide any information in relation to it.

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 think that the circumstances are sufficiently clear. We do not think that further clarification is necessary. In addition, we consider that it is a reasonable assumption that if personal information is taken, it will be used to formulate a recommendation.

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

No, we do not think there are other criteria to consider.

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 have no specific comments to make.

Q.8. Are there specific examples of situations you would like considered, where it is difficult to determine the nature of the advice?

We have no specific comments to make.

What is Advice?

Investment Advice means the provision of “personal recommendation” to a client, either upon their request or at the initiative of Aviva Investors, in respect of one or more transactions relating to financial instruments.

A personal recommendation is a recommendation made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor. The recommendation must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

- To buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
- To exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

In simpler terms, there have to be three elements to the communication for it to be Advice:

1. Personal recommendation – It must be personal to the recipient and presented as suitable based on consideration of their circumstances;
2. Client – Any natural or legal person, e.g. individual, institution, or pension fund trustee; and
3. Financial instruments – The advice must be in relation to a specific instrument, e.g. in relation to a unit or a share (including shares in an ICVC).

Examples of what is and what is not investment advice

Investment Advice	Not Investment Advice
A recommendation to a client relating to a specific financial instrument.	General marketing to the public
A recommendation to a client on the size of a transaction.	A recommendation issued exclusively through distribution channels or to the public.
A recommendation to a client on the timing of a transaction.	Explaining the implications of exercising certain rights or of a certain event (such as death).
A recommendation to invest in a certain fund type, but where only one fund of that type is available.	Advising on how to complete an application form.
Advising a client that it would be a good time to buy or sell a share when it reaches a certain value.	Comparing the benefits and risks of one financial instrument to another.
Advising on the merits of a transaction or product.	Presenting our capabilities and products range.
	Explaining the structure and terms of a financial instrument.
	Offering to sell a particular financial instrument.
	Alerting persons to the happening of certain events (for example that shares in company Y have reached a certain price).
	Publishing league tables showing the performance of financial instruments of a particular kind against set published criteria.
	Listing the prices of financial instruments.