



Monsieur Carlo Comporti
Committee of European Securities
Regulator (CESR)

11-13 avenue de Friedland
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Paris,
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Response to the CESR's consultation on understanding the definition of advice under MIFID

Ref: CESR/09-665

Dear Mr Comporti,

The Compagnie des Conseillers en Investissements Financiers (CCIF)¹ welcomes the opportunity provided by the Committee of European Securities Regulator (CESR) to comment on the consultation on understanding the definition of advice under MIFID.

CCIF's general comments

Firstly, we would like to confirm that our professional association completely shares the CESR's view that *"the provision of "corporate finance advice" and the provision of investment advice are not mutually exclusive. Indeed, these two forms of advice appear to overlap to a very significant extent."*

Moreover, we would like to remind that the European Commission has published on its website a number of questions and answers concerning Mifid.

To the question – *"An independent firm specialised in mergers and acquisition falls under Section Annex 1 (3) (ancillary services). Does it also fall under the definition of Investment Advice?"* - the answer was – *"(...)There may be activities carried out by a corporate finance firm during an M&A transaction which constitute the provision of investment advice under MiFID."*²

¹ The Compagnie des Conseillers en Investissements Financiers (CCIF) is a professional association authorised by the French Financial Market Authority (AMF) to represent and defend the rights and interests of their members. Our members are independent corporate finance advisors, regulated for their activities of *"financial investment advice"*. They include 105 independent corporate finance companies.

² <http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=381>

Since its approval by the AMF in December 2005, the CCIF has chosen to authorise only members whose principal activity is defined by Mifid as “*advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings*”, also known as corporate finance advice.

We are aware that there are many totally unregulated advisers operating in a corporate finance context, but since investment advice became an investment service under Mifid which can therefore only be provided by an authorised or an exempt person, this situation should not last.

We consider that corporate finance advice is seldom provided without giving investment advice as the advice is often followed by a personal recommendation made to a client to buy or sell transferable securities. Investment advice can then be provided in a principal manner or in an incidental manner.

In France, if we consider that the definition of corporate finance advice is given by Mifid ancillary service of advice to undertakings on capital structure (...), it is then not a regulated activity. However, this activity moves in a regulated environment.

Corporate finance advisors are regulated by the French Loi Hoguet, when they deal or assist in dealing with the sale and purchase of realty and other similar activities defined by Article 1 of the law (Law 70-9 of 2 January 1970).

Corporate finance advisors are regulated by the French Monetary and Financial Code (Code monétaire et financier) when they provide personal recommendations to their client, in respect of one or more transactions relating to financial instruments.

Corporate finance advisors are regulated by the French Monetary and Financial Code for the disposals related money laundering and terrorist financing when they advise on transactions involving the movement of capital.

This is the reason why our members have chosen the status of an authorised advisor regulated by our professional association.

The CCIF wishes the profession of corporate finance advice to be regulated by a unique code of ethics governing the profession, which does not exclude the provision of the service of investment advice where that service is provided in an incidental manner in the course of a professional activity as it applies in the Mifid³.

Questions

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

The CCIF admits that the frontier between investment advice and corporate finance advice cannot be that clear, as investment advice is most of the time provided while providing the service of advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.

However, the CCIF tries to distinguish investment advice from corporate finance advice through the distinction of a *personal recommendation* and a *general recommendation*.

³ Article 2 (Exemptions) 1. c) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

When a corporate finance advisor only provides a general recommendation - which could also be defined as strategic advice not involving financial instruments - the activity can be provided without any authorisation. However if the given advice is considered as a personal recommendation - that is to say it involves a transaction relating to transferable securities - then this advice constitutes the provision of an investment advice, that can only be provided by an authorised or exempt person.

A personal recommendation cannot be provided if the advisor is not at least member of an organisation whose code of ethics governing the profession does not exclude the provision of the service of investment advice.

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

A corporate finance advisor does not have the unique role of an intermediary between a buyer and a seller. He advises one party, the buyer or the seller, on the sell or purchase of his shares and/or his assets. He participates in the negotiations of the price and terms of the purchase or sell. The long process necessarily leads to a personal recommendation and this is what is asked from his client.

However during the process it is quite impossible to say when the general recommendation finishes (i.e. corporate finance advice) and when the personal recommendation starts (i.e. investment advice).

If CESR would find it useful, we remain available for any further questions.

Yours sincerely,

Le Président

Gilles de Courcel