



Chambre Nationale des Conseillers
en Investissements Financiers

Monsieur Carlo COMPORTI
Secrétaire Général CESR
11-13, avenue de Friedland
75008 Paris

Paris, le 14 décembre 2009

Objet : CESR Consultation paper

Monsieur le Secrétaire Général,

Nous vous prions de bien vouloir trouver ci-joint la réponse de la Chambre Nationale des Conseillers en Investissements Financiers – CNCIF, à la Consultation Paper du CESR sur le thème "Understanding the definition of advice under MiFID".

Vous en remerciant par avance et restant à votre disposition

Nous vous prions de croire, Monsieur le Secrétaire Général, en l'assurance de notre considération distinguée.

Elizabeth DECAUDIN
Déléguée Générale

PJ : réponse de la CNCIF



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CESR Consultation Paper "Understanding the definition of advice under MiFID"

The Chambre Nationale des Conseillers en Investissements Financiers (« CNCIF ») is a self-regulated organization in charge of the representation and defence of financial investment advisors. Members of the CNCIF may operate as investment services providers under MiFID or under the specific status of financial investment advisor set forth by the Monetary and Financial Code¹. In the former case, membership to the CNCIF is not mandatory. In the latter case, membership to a professional association such as CNCIF is mandatory. Regardless of the status, members of the CNCIF have a common interest in the definition of advice under MiFID, as such definition has been reproduced in the French Monetary and Financial Code and applies without distinction to investment services providers and financial investment advisors.

The CNCIF wishes to focus its contribution to questions 7 and 8 dealing with the distinction between investment advice and corporate finance advice.

The CNCIF agrees with the pragmatic overall approach taken by CESR. As stated in § 76 the provision of investment advice and corporate finance advice are not mutually exclusive and often times overlap. The crucial focus point should, as rightly described in § 72, be the nature of the recipient of the advice (investor vs. issuer) in light of the central aim of MiFID which is the protection of such an investor.

However, the CNCIF does not fully agree with CESR's position as expressed in § 77. The CNCIF takes the view that a case-by-case analysis of the individual situation of a client (in light of factors such as his need for protection, his relative bargaining power, his knowledge and experience) is hardly compatible with the requirement for investment firms to be licensed to provide their services as it stems from MiFID. The license requirement is not optional. It is a condition to the provision of the investment service. As a consequence, in order to carry out the case-by-case analysis envisaged by CESR, the firm will need to be licensed.

In other words, considering the intricate nature of the services covered under both the definition of investment advice and that of corporate finance advice, the CNCIF takes the view that the investor protection requirement of MiFID should prevail and that, as a matter of principle, firms providing corporate finance advice insofar as it relates to the second part of the definition of Section B(3) of Annex 1 of MiFID (i.e., advice and services relating to mergers and the purchase of undertakings).

As a consequence, clients of such firms would benefit from the highest level of investor protection, with the same type of exemption mechanisms as for any other investment services providers under MiFID. The CNCIF therefore supports the position described in § 74. In addition, adopting this approach would have for consequence of clarifying the current ambiguity which would also increase legal safety for all interested parties.

¹ Art. L541-1 et seq. Monetary and Financial Code.