

Memorandum 38 – November 2009

CESR Consultation – Understanding the definition of advice under MiFID

Introduction

The Fédération Européenne des Conseils et Intermédiaires Financiers represent approximately 300,000 European financial intermediaries through:

- 24 national trade associations representing 247,896 registered intermediaries from 12 EU Member States
- One financial institution operating cross border
- 13 pan European commercial networks incorporating 34,150 registered intermediaries operating across 22 EU Member States

FECIF has also created two national chapters, FECIF-France and FECIF-Poland to accommodate the smaller local national associations.

The last survey carried on 1,245 intermediaries and 3,124 consumers (existing and/or potential clients of intermediary's member of FECIF) from ten EU Member States indicates that:

- 37% of the total number of consumers contacted prefer to deal through an intermediary because of the personal attention they received at the occasion of a face-to-face meeting
- 30% better trust an institution to handle their financial affairs, feeling secured by the size of the bank and/or the insurance company
- 18% prefer to rely on the assistance of a friend or a member of the family
- 12% refer their queries to another professional (accountant, tax adviser, lawyer, etc.)
- 3% handle their affairs directly through the Internet

Answers

Q1 – No

Q2 – Yes

Q3 – 1st part: Yes
2nd part No

Q4 – We feel extremely uncomfortable with the fact that an implicit recommendation could be considered as an advice (explicit by nature) which seems to us to be a form of distortion of basic legal principles. Therefore if at all suitable, further very detailed clarification is necessary to make an implicit recommendation to be considered an explicit advice including a list of phrase which should be banned in all marketing literature.

Q5 - 1st part: Yes
2nd part No

Q6 – We are of the opinion that messages to multiple clients CANNOT constitute systematically investment advice otherwise it may imply in some Member States applying a strict interpretation of this principle a complete ban of all press articles related to investment, etc.

Again, only a very detailed list of criteria could prevent the risk that at the end ANY communication about investment could be considered as investment advice.

Q7 – It seems that a proper KYC should assist in determining if what the firms provide is investment advice or corporate finance advice

Q8 – No

For any further information, please contact Christine Brébart at:

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