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CESR
11-13 Avenue de Friedland
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RE. Consultation on Understanding the definition of advice under MiFID

Sir, Madam,

I am writing to you to raise two particular issues that were not addressed in the above-mentioned consultation paper.

As a specialist of US securitized products, I have worked in that field for 12 years, most recently at Goldman Sachs and Morgan Stanley as head of securitized products research or strategy. This letter reflects my own opinions, and not necessarily those of the firms that employed me.

The two particular issues I would like to address are generic advice and selecting products in a given list.

1. Generic advice

On p.9, in paragraph 28, the instances of “transactions” that a recommendation can be in relation to make reference to a “particular financial instrument”. In paragraph 32, generic advice is defined as not relating to a particular financial instrument, and the example of bonds versus shares is given.

In the field of securitized products, a majority of investors view the investment universe as relatively precise sub-sectors. For example, one might consider “sub-prime last cash flows from 2005”, or “seasoned jumbo prime front sequentials”. These small sectors normally contain a few hundred distinct bonds. Investment decisions are most often expressed in terms of these sub-sectors rather than for specific bonds. Once the decision to invest in a particular sub-sector has been made, one would typically look for bonds of that sector in bid-lists or dealer offerings.

Another aspect to consider is that traded indices such as the ABX.HE indices reference a basket of 20 different bonds in such specific sectors. Hence a recommendation to buy “late 2005 subprime AAA last cash flows” is really very close to a recommendation to buy exposure to the ABX.HE.2006-1 AAA index.

In that case, is advice concerning the comparison of various such sub-sectors truly generic advice? If I read the definition of paragraph 28 the answer would seem to be yes, but at the same time the advice in question would be particular enough that it would encompass a very large majority of the investment decision process in the field of securitized products.

It could be helpful to set a threshold in terms of the number of distinct securities a sector should contain so that a recommendation in relation to that sector remains generic.

2. Selecting products in a given list

If an investors asks “out of these very similar 20 bonds, which one is the best?”, and I provide an answer “bond #3 is the best” with or without justification, is that investment advice?

In this situation, the answer is clearly a recommendation, in relation with a particular financial instrument, not issued through public channels, to an investor. It would appear to me that if the 20 bonds in question were from different sectors entirely, there could be no simple answer without necessarily considering the circumstances of the investor. However, if these are very similar bonds, from the same sector, the circumstances of the investor do not need to be considered. The investor could be presumed to have already decided that the sector is suitable.

It would be helpful to know if this particular situation should be considered as investment advice or not.

Best regards,

A handwritten signature in black ink, appearing to be 'Laurent Gauthier', written over a horizontal line.

Laurent Gauthier