ASSORETI
Association of Intermediaries which provide investment advice service

The General Secretary

Rome, 19t[h] October 2021
Ref. no. 71/21

To ESMA
European Securities and Markets Authority

Via ESMA website

Object: ESMA's Consultation Paper – Guidelines on certain aspects of the MiFID II remuneration requirements (Ref. Esma 35-36-2324) – Focus on the example illustrated in par. 52d.

Assoreti – Association of intermediaries which provide investment advice service through their qualified financial advisors – is grateful to ESMA for the opportunity given to market participants to make comments on these draft of Guidelines and, sharing purpose and content of the review, wishes to draw attention exclusively on the example of poor practice described in par. 52d, in order to have certainty that this practice does not encompass the Italian distribution model, adopted by such intermediaries (banks, investment firms, asset management companies).

For the sake of convenience, we provide below the full text of par. 52d: "*To distribute its products, a firm relies on a multi-level sales network (consisting solely of personnel or third-party distributors which are remunerated according to the volume of transactions of the clients captured directly by themselves, and their ranking in the sales structure of the firm. The sales structure of the firm is organised by multi-level groups of individuals coordinated by another individual called "supervisor" or "manager" and who is in charge of the support, training, coordination and supervision of the structure. These supervisors or managers are also tasked with the recruiting of other individuals. Where such sales structures have many levels of agents, this may make it difficult for the firm to monitor the compliance risks with these guidelines for each level (especially the most remote) and the whole structure*."

Such example of poor practice would result from the supervisory experience of some National Competent Authorities (Background, par. 34) and would reflect the need to avoid the "*setting overly complicated outsourcing or distribution structures (including through the use of tied agents) which may make it difficult for the firm to monitor the compliance risks with these guidelines and with the conflicts of interest and conduct of business policies and procedures in the area of remuneration or increase the risk of detriment to clients' interests.*" (Annex 3, par. 49).

Assoreti's interest stems from the fact that the above-mentioned example contains references that, *prima facie*, could lead one to identify elements of the special distribution model successfully adopted for decades by Italian and other EU banks and investment firms, which make use of dedicated financial advisors qualified to provide off-site investment advice services to the clients. Also as a result of aggregation processes in response to the various economic crises of the last two decades, the number of financial advisors reaches, within some intermediaries, a few thousands units, necessarily structured in a multi-layered schemes, in order to fulfil understandable organisational issues and to grant the best possible effectiveness of controls, as described in further detail below.

The above-mentioned distribution model has developed in accordance with a regulatory framework, the first step of which was laid down by CONSOB – the Italian NCA – back in 1985, which has been gradually fine-tuned, reaching an optimal balance between *the rule* and *the market*. Italian intermediaries have shared the rigour of this regulation and have made significant investments to comply with it, considering it essential for investor confidence in the market, adopting control systems and remuneration policies strictly defined by the NCAs.

In this regard, CONSOB, in order to better ensure the fairness of the performance of intermediaries using qualified financial advisors, in its Communication no. 12630/2016, set out the best practices in the field of controls to that all intermediaries shall comply with in a manner that is "*proportionate to the nature, size and complexity of the activity carried out as well as to the type and range of services provided*", also pursuant to art. 16(2) and art. 29(2)(cpv) MiFID II.

In particular, the best practices, mentioned in that Communication, define second and third level control functions and the subjects entrusted with the control tasks on the network, even when it is structured on multi-layered schemes according to a "pyramid network structure", within which the "managers" are also in charge with monitoring tasks on the operativity of the financial advisors that they control, providing a specific form of remuneration for such managerial activity. The over-mentioned structure is not different from the multi-level hierarchical organization of employees and it fulfils the criteria of efficiency in the management and in the control of activities. Moreover, the levels' number of this structure depends on the number of financial advisors that operate for the intermediary and also by the extent of their respective areas of competence. For this reason, having to take account of such a large number of realities, CONSOB has therefore recommended that intermediaries should:

i) be able to delegate line controls to commercial structures provided that appropriate organizational solutions are adopted to keep the latter separate from the second and third level functions that exercise control over them;

ii) provide managers with appropriate tools to enable them to carry out the controls assigned, along with the provision for penalties in the remuneration system in case of non-fulfilment diligently the obligations;

iii) carry out remote checks on the activities of authorised financial advisors through the development of a computerized anomaly systems indicators which must be constantly monitored in order to identify the suspicious behaviour on which to focus controls more efficiently[1]

In addition, Banca d'Italia (Italian Central Bank), which is responsible for supervising both the capital stability of intermediaries and the containment of risk, has subjected financial advisors to the same regulations as those for aligning employee's remuneration and incentive policies and practices with the pursuit of medium-long term corporate objectives (see Circolare no. 285/2013, part I, Title IV, paragraph 2, section IV). Consequently, Banca d'Italia has required that the recognition of incentive remuneration of financial advisors is conditional on the achievement of objectives, including qualitative ones with the risk of being subjected to malus and claw-back mechanisms. Furthermore, Banca d'Italia has also established that financial advisors acting in a supervisory and coordinating role (managers) may be included in the intermediary's "identified staff" on the basis of qualitative criteria or, in any case, to the achievement of the same quantitative criteria provided for employees and should be subject, if necessary, to the stricter requirements provided for such employees, such as the award in financial instruments of a part of incentive remuneration and the deferment of its payment over time.

Further provisions have been implemented by intermediaries, including through the self-regulatory rules adopted by ASSORETI and by other relevant associations, creating a framework of controls over financial advisors that was clearly not considered in par. 52d of the Consultation document and that could adequately counterbalance the concerns raised in it.

In conclusion, it should be considered that in Italy the financial advisor is a physical person (which is subject to the public control of a Supervisory Board) and the intermediary, even when it has hundreds or thousands of qualified financial advisors, always recruits them all individually and submits them directly to its instructions and internal control systems, with the result that such financial advisors cannot operate in outsourcing or constitute forms of multilevel marketing.

Lastly, it is considered useful to provide an idea of the market reached by intermediaries providing investment advice service through financial advisors. On the basis of data collected by Assoreti from a sample of sixteen of its Associates,

[1] Specifically, CONSOB has stated that intermediaries should have a number of anomaly indicators covering at least all the areas regulated by the "*Supervisory Code on financial advisors*" – "*Codice di Vigilanza sull'attività dei consulenti finanziari*". This Code was adopted by ASSORETI in 1998 and has been subsequently implemented in line with the evolution of regulations and intermediaries' practices. It currently identifies forty-two types of indicators of possible anomalies in relation to the activities of authorised financial advisors. In particular, a subset of indicators is specifically based on the analysis of clients' transactions in circumstances "*which may give rise to a presumption of improper commission generation*".

having a total of approximately 24,000 qualified financial advisors, it emerges that they provide advice to approximately 4,785,000 clients, holding assets of approximately 745 billion euros (representing 15% of the total financial wealth of Italian households); the 70.5% of these assets are represented by asset management products (about a quarter of total assets under management, rising to a third if the industry's contribution to the open-ended UCITS/OICR sector is taken into account); the liquidity amounts barely to 15.5% (compared to 32.5% of the share of liquidity in the total financial assets of Italian households); the residual 14% belongs to assets under administration (ASSORETI data as at 30 June 2021).

These data highlight the virtuous synergy between the rule and the market mentioned at the beginning, demonstrating the ability of intermediaries who base their business model on networks of financial advisors to intercept savings and direct them towards long-term stable investments, neutralizing the most speculative trends and supporting the current instances of sustainable growth, always respecting the client's needs and objectives.

We would therefore kindly ask your esteemed Authority to take note of the special rules governing the distribution model adopted both by Italian firms and by other EU countries that operate through qualified financial advisors in Italy, confirming that this model, when performed in accordance with the regulatory provisions, as summarised above, and in particular with the specific indications contained in CONSOB Comunicazione no. 12630/2016 and Banca d'Italia Circolare no. 285/2013 (Part I, Title IV, paragraph 2, Section IV), represents a good practice in accordance with MiFID, and reviewing or removing as a consequence the example of bad practice referred to in paragraph 52.d of the Consultation Document in question.

Assoreti wishes to thank you for the attention provided and is available for any collaboration requests.

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