



European Commission
Directorate General Internal Market and Services
Financial services policy and financial markets
Securities markets

NAFOP – the National Association of Fee Only Planners www.nafop.org

Answers to questions contained in your letter of April 12, 2010

(1) Nafop (The National Association of Fee Only Planners) was created in order to protect the interests of those who offer financial and wealth planning, within which they offer fee only investment advice.

The number of such persons operating in the Italian market does not have an official count at the moment. In 2002 the European Commission, under Professor Romano Prodi, while elaborating a proposal for the Investment Services Directive, had estimated that the number of such persons operating in Italy is about 7000 (see Attachment/Allegato A). From our experience, we believe that the number has risen, as our association (which is the most representative in Italy) has gathered in a short time nearly 300 members and is not the only association in Italy. There are certainly many who operate and are not members of any organization, and the interest towards this kind of activity is growing, in relation both to those wishing to avail themselves of this service, as to those who seek to provide it.

Surely when the Register provided by the Italian legislation will be activated, the number of entities operating in this way will increase significantly.

The market share of these subjects in terms of number of savers assisted can be estimated on the basis that each person follows an average 50 clients. The market share in terms of “assets under advice” is higher, as the clientele of Fee Only Planners have wealth which is higher than the average person.

A greater development of the profession would have certainly taken place already if the implementation of MIFID in our country had been accelerated, especially as for what concerns investment advice provided under Article 3 and the completion of the roll. The service of Fee Only Planners is in fact very welcome and our members are experiencing a steady customer growth.

(2) To date, the exemption regards small entities because we are still awaiting the Government Decree on the requirements of consulting firms, which will open the way for large entities. Most members work in individual form and without staff. The annual turnover of each Fee Only Planner likely to vary between 50,000 and 200,000 euros if the activity is carried out individually. Those

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who work in an associated form or in a firm may have a significantly higher turnover.

(3) The impact of hypothesis sub a) on our members - we believe the same about other actors who operate in the same manner - would be extremely serious and would drive almost all out of business. They are basically professionals, who provide a service of intellectual content limited to the sole advice, in a situation of no conflict of interest with clients. Therefore their activity should be regulated differently from that of financial intermediaries and investment firms that typically combine investment advice with the sale of products.

We can say that in many respects the full subjection to the above rules would have no reason, since the risks that these rules are intended to contain are essentially nonexistent in the case of Fee Only Planners. This is true of Articles 7 (Risk Management), 9 (Responsibility of senior management), 13 and 14 (Outsourcing), 15 (Service providers located in third countries), 16, 17, 18 and 19 (Protection of Securities and client funds). The Fee Only Planners in fact do not exhibit the organizational characteristics that create these risks. With regard to remaining aspects, the activity of Fee Only Planners of investment advice was already settled in our country, by specific and extremely detailed regulation (Consob Regulation n. 17130 dated January 15th 2010) which provides investors a high level of protection.

As for what concerns hypothesis sub b), this would consist in subjecting Fee Only Planners to the items of MiFID which determine the rules of conduct for investment firms towards clients. These rules stem from the existence of a conflict of interest between investment firms and customers, deriving from the simultaneous pursuit of placement and brokerage services together with the service of financial advice. This is not the case of Fee Only Planners who carry out only the service of financial advice, without conflict of interest and therefore have a role towards the Client which is quite different. They are paid exclusively by the customer, not only for their own commitment and in accordance with the Nafop Code of Conduct, but also in accordance to the express provision of the rules implementing MiFID wanted by the Italian legislation (Art 18-a and 18-b of the Consolidated Finance Law existing in our country, and Art 5 - independence requirement - of the Ministerial Decree which defines the requirements to be registered on the Roll).

The Italian legislator has taken a leading position in investor protection, creating a regulatory framework that guarantees, for investors, the presence of advisers without conflicts of interest on the market. Consultants have made protection of the interests of the customer the sole aim of their activity. In other words, **they are paid by the Customer solely for advice based on that investor protection** provided by Article 19 of Directive 2004/39/EC and Articles 26 to 38 of Directive 2006/73/EC which they seek to obtain by curbing conflicts, but without completely cancelling them.

The mentioned Consob Regulation was drawn up specifically for consultants without conflicts of interest, as defined by the Italian legislature based on the provisions of article 3 of MiFID. It provides detailed regulations designed to achieve the goals of investor protection, while drawing into consideration the specific characteristics of Fee Only Planners. These characteristics may be summarized in the professional nature of their activities.

A full and direct subjection to Article 19 of Directive 2004/39/EC and to the Articles 26 to 38 of Directive 2006/73/EC would aggravate the formal obligations, putting out of business many individual consultants. On the other hand, it would add nothing to the protection of investors, which is provided for by Fee Only Planners in their own natural interest, by not offering to the market anything but this service which protects. The above-mentioned Consob Regulation 17130, made under the exemption provided by Article 3 of Directive 2004/39/EC, is a balance which is already very satisfactory from the standpoint of the investor. In fact, it reconciles on one hand extensive guarantees offered by a complete and verifiable process in terms of advice on the principle of adequacy and on the other, the proportionality of the formalities correctly laid down among the principles of MiFID.

(4) Nafop retains therefore that Article 3 of MiFID should be kept as is. The first motivation of maintaining such exemption is in the "rationale" of the inclusion of advice on investments among the financial services requiring authorization (paragraph (3) of MiFID). **It clearly lies in the need to protect the investor, primarily in situations where the lender carries out both consultancy and placement services or brokerage, which give rise to a conflict of interest with the investor-client himself.** In the activity of professional services carried out by Fee Only Planners, such conflicts are structurally absent. Indeed, among the main aims of the service, and therefore among the reasons why it is paid for, is the **defence of the investor from conflicts of interest inherent in the creation and distribution of securities.**

The exemption in question allows the development of a professional consultancy that is in the public interest and that the Italian legislature has properly designed to provide and guarantee to the market. In this regard, **please note the conclusions of the Finance Committee of the Italian Senate with respect to the known problem of financial derivatives placed by the banking system to public bodies and enterprises (Annex B).** This Commission explicitly recommends public bodies to make use of independent financial advisers registered with the specific roll.

The Fee Only Planners play a role of protecting investors and promoting fairness in financial markets essentially on the basis of their independence - or lack of conflicts of interest - and their own professional training. The formalities and controls, of course, may be helpful but must not become an organizational and economic burden that prevents the carrying out of the typical activities of a profession. This activity is normally carried out without significant aid of means, of personnel or of investment capital, as is true for the legal profession, or for sales and tax consultancy, because, as these, it derives its value from knowledge, and not from organizational or economic means.

A second reason for maintaining the current exemption scheme is that it facilitates a distinction between Fee Only Planners and investment firms. It facilitates therefore the creation of a specific discipline of the profession which is carried out by our members, discipline which must have as main aims the specific characteristics for Fee Only Planners required by investors. These characteristics are, as mentioned, independence and competence.

We believe that the emergence of the Fee Only Planner profession is in the public interest in our country and throughout the European Union. It may result, during the procedure of personal



financial planning – therefore within the scope of investments – in the rebalancing of asymmetric information which has seriously damaged savers and investors during many, even recent, events.

It would be paradoxical that for legal services, for administrative and fiscal management services, in the medical profession, in the area of design and construction, and in many other areas, consumers may make use of truly independent consultants, while in the area of investment, advice activity may be reserved only to subjects operating in conflict of interest. The imposition of excessive burdens on professionals who provide financial advice could have the effect of preventing in fact, even if not under law, their activities. The maintenance of the exemptions in Article 3 MiFID may help avoid this risk.

The third reason why we consider it inappropriate to amend Article 3 of MiFID is that on the basis of it, a framework for implementation has already been promulgated in our country, which must be completed with the creation of the register which will enrol Fee Only Planners. **Many professionals are already active on the basis of this regulatory framework and of the transitional rules promulgated while awaiting for the Register. Many customers use the expertise of these Planners. A greater number of persons await for this framework is complete, in order to launch new consulting businesses, or to rely on them.** Changing now the conditions of Community legislation would be a serious harm to all these subjects, resulting in the termination of several businesses. It would also take away a possibility of consultancy without conflicts of interest that investors are showing more and more to appreciate.

Thanks for your attention
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