



CESR Technical Advice to the European Commission in the Context of the MiFID Review Investor Protection and Intermediaries

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

Consultation paper – May 31, 2010

NAFOP (The National Association of Fee Only Planners) is intended to protect the interests of professionals who provide advice on estate and personal financial planning without having any conflict of interests with their clients (fee only). It is within these business activities that they provide the service of investment advice as defined by MiFID.

There is not an official number of such professionals operating in the Italian market at the moment. However, in 2002 the European Commission headed by Professor Romano Prodi, in the drafting of the proposed Investment Services Directive, estimated that such individuals in Italy were about 7000. To our experience the number of persons practicing this activity should have increased since 2002. Our association, the most representative in Italy has collected in a short time almost 300 accessions and is growing exponentially. Also, we must consider that there are certainly many professionals who are not members of any organization, and that general interest in this profession is growing.

The distinctive characteristic of fee only financial planners belonging to NAFOP - as of all the professionals who NAFOP intends to protect - is the formal promise these financial planners make to customers and to the market, which is to be paid solely by the person in whose interest the advice is given and to not having links to subjects that emit, manage, or place financial instruments and products. It is therefore of professionals in all respects.

Under the transposition of EC Directives 73/2006 and 39/23004 and in particular under Article 3 of the first one, the Italian legislature has specifically recognized an advisor who, although not qualified as an investment firm, is authorized to provide only investment advice and that he does not hold money or securities belonging to customers (Article 18 - Legislative Decree 58/1998 bis as it stands).

The Ministry of Economy and Finance has established among the requirements for such professionals the prohibition to receive any form of benefit from persons other than the client to whom is rendered the service (Article 5 MEF Decree 24 December 2008, N. 206). In that way, there has been opened the way for the recognition of a specific professional business category within the field of financial advice.

NAFOP now wishes to express its position with respect to Part 6 of the consultation in question.

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National Association Fee Only Planners - Mifid Compliance Legal Department

Via dei Mutilati, 3/d- 37122 Verona - tel. 045.8010894 - fax 045.595767 - info@nafop.org



With regard to Part 6 of the consultation, NAFOP notes that Articles 5 (5), 16 (3) and 17 (2) of MiFID are properly motivated. The reason is the fact that firms that provide only investment advisory services (as our members) or transmission of orders (which is currently prohibited to our members) are characterized by the absence of conflicts of interest with clients. They therefore represent a very low risk for investors. The delegation of supervisory functions to non public self regulated bodies does not imply therefore a lowering of the level of investors protection. It is instead a recognition of this specific function of protection of investors, which is offered naturally from those who only carry out advisory activities, as they are paid only for such service.

Now the repeal of those articles doesn't affect the legal framework regarding our members and all those involved in Italy sub Art. 18-bis TUF, since it relates only to investment firms. However, it appears as a tightening of procedures for authorization and control over business activities – financial advice and transmission of orders - which do not pose special risks for investors. Indeed, the giving of advice, if carried out in exclusively and without conflict of interest, is a protection for investors.

A possible repeal would mean applying a principle which is unfavorable to professional activity in the field of investment advice.

NAFOP believes on the contrary that the recognition and the specific regulation of subjects that offer exclusively financial and investment advice which is prohibited from being paid by others than the customer - as is in Italy - is in the public interest in all European Union countries.

Thank you for your attention
Cesare Armellini
President
Nafop

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