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**Observations by the Chambre Nationale des Conseillers en Investissements Financiers (CNCIF) on JC/CP/2014/05, the Joint Committee Consultation Paper of the European Supervisory Authorities on guidelines for the cross-selling practices of undertakings supervised by these authorities.**

The CNCIF, in its capacity as professional association authorised by the French Autorité des marchés financiers, in charge of the collective representation of financial investment advisors (FIA), has examined the ESMA/2014/549 consultation paper of 22 May 2014 and wishes to make the following observations.

On a preliminary basis, the CNCIF considers that FIAs are directly concerned by these guidelines.

Indeed, they provide the investment advice service within the legal framework applicable to them in France and in this respect are bound by all the legislation relating to the provision of investment services, which includes the supervision of their activity by the Autorité des marchés financiers and the application of the rules arising from Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 concerning markets in financial instruments, to which the consultation document refers (§2, *Background*).

On the other hand, the CNCIF draws the attention of the authorities to certain specificities relating to the distribution set-up of financial products in France.

Firstly, the CNCIF draws the attention of the authorities to the fact that the status of financial investment advisor is an exception which finds its source in article 3 of Directive 2004/39/EC: "*Member States may choose not to apply this Directive to any persons for which they are the home Member State and who [...] are not allowed to provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings and the provision of investment advice in relation to such financial instruments, and [...] provided that the activities of those persons are regulated at national level.*" **Financial investment advisors are not therefore covered by the definition of "investment firms" (as defined in Article 4(1)(1) of Directive 2004/39/EC).**



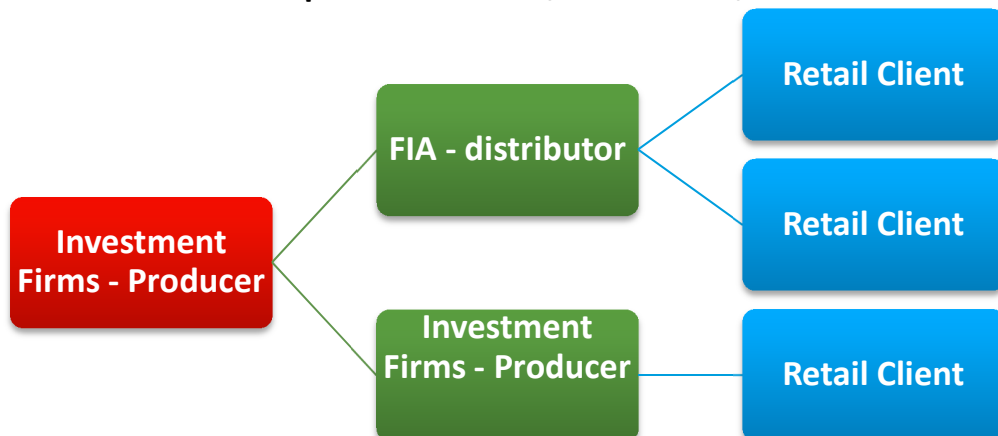
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In this respect, the CNCIF should be obliged if the authorities would assess this regulation taking this exception into consideration.

Secondly, although they do not belong to the population of investment firms, **financial investment advisors provide the investment advice service within the legal framework applicable to them in France** and in this respect are required to comply with all regulations applicable to the provision of investment services.

Moreover, as **essential partners of the producers in the financial products and services distribution circuit in France**, financial investment advisors are naturally in business relations with investment firms to which Directive 2014/65/EU and Regulation 300/2014 are directly applicable.

### French business model pattern: "Client / Distributor/ Producer Relations"



#### 1- Description of cross-selling.

No comments

#### 2- Advantages and disadvantages identified.

No comments



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### **3- Potential loss for the client.**

No comments

### **4- Examples of detrimental cross-selling practices.**

No comments

### **5- Full disclosure of information (*Guidelines 1 and 5*).**

*Guidelines 1 and 5* impose a number of obligations of information on distributors of financial products - information regarding the price of the *package* of products and the price of each product taken separately (§13); detailed information on costs relating to the component products of the *package*, such as administration fees, transaction costs or exit fees (§14); finally, information relating to non-price features and risks linked to the *package* in general and its components in particular, as well as to the comparison of risks linked to the decision to buy the *package* rather than buying its components separately (§19).

In so far as concerns these obligations of information, it may be useful to make a distinction between distributors who produce the *package* themselves and then distribute it, and "pure" distributors who simply distribute a *package* provided by a third party.

FIAAs, while providing financial investment advice, principally distribute *packages* produced by third parties (investment firms). The information available to them thus depends exclusively on that provided by this third party.

Thus, it would appear to be logical to limit the responsibility of the distributor of a *package* produced by a third party to the successful transmission to the end client of the information previously provided by this producer. The sole responsibility of the distributor should be to transmit the information provided by the producer and, in the case of FIAAs, to provide advice based on such information. The accuracy and scope of the information provided must therefore, from the outset, be the responsibility of the producer, who is acquainted with the financial services and products that it has designed and that constitute the *package*.



The chain of responsibility regarding the information provided to the end client on the risks and costs linked to the *package* and its components must therefore start with the producer, who has an obligation to transmit all the information needed to the distributor who will then, in turn, be able to transmit it to its end user client. The responsibility of the distributor must thus consist in transmitting to the client all the information provided by the producer and in providing its advice based on these elements.

## **6- Conditions governing the prominent and timely display of information**

*Guidelines 2, 3, 4 and 6* place upon the end distributor a number of obligations relating to the procedures for communicating and presenting information - an obligation to inform the consumer in good time allowing the latter to make an informed decision (*guideline 2*); an obligation to provide clear, prominent, and in a simplified or jargon-free language (*guidelines 3 and 6*); an obligation to present the *package* and its components in a manner which is not misleading, does not distort the impact of factors and allows accurate comparison with other products, in particular with regard to any risks linked to the *package* (*guidelines 4 and 6*); finally, specific obligations relating to the presentation of costs (*guideline 3*).

For a distributor of a *package* produced by a third party, it should be noted that in practice, the distributor's ability to fulfil these different obligations will depend on the producer. Thus, it may be useful to specify that the producer is obliged to provide its distributors with information that is complete, faithful, clear and easy to understand from a technical point of view, in good time.

Moreover, if the producer itself provides the marketing documents linked to the *package* and its components itself, adherence to the presentation procedures by the distributor will be dependent upon them being adhered to by the producer. In the contrary case, the distributor will not be able to distribute the said products.

## **7- Optionality of purchase of the *package*.**

*Guideline 7* imposes upon the distributor an obligation to inform the client of the compulsory nature of the tied purchase or its optionality, if its components can be acquired separately.



Here too, in order to enable the distributor to fulfil its obligation of information, in practice the producer must itself comply with this obligation to ensure that the information chain is unbroken from producer to end client.

#### **8- Assessment of the client profile.**

No comments, already required by the Directive.

#### **9- Training and remuneration.**

- No comments on *guideline 9*
- Concerning *guideline 10*:

*Guideline 10* requires that the regulatory authorities ensure that any fixed and variable remuneration policies (notably performance bonuses) implemented by the distributors in respect of employees involved in distribution, are such as to encourage responsible business conduct, fair treatment of clients and avoidance of conflicts of interests.

*Guideline 10* appears to concern solely the fixed and variable internal remuneration policies implemented by the distributor within its teams. It does not specify the conditions under which the distributor will be appropriately remunerated by the producer of a *package* which it has distributed.

#### **10- Post-sale cancellation rights**

No comments