

	Investment advice	Suitability and Appropriateness	Tied agents
<p>MIFID Description</p>	<p>Definition Investment advice is the provision of personalised recommendations to a client, on his request or at the initiative of the investment company relating to one or more operations concerning financial instruments. It is one of the investment services which requires authorisation.</p> <p>When the investment company provides the advice service, it must obtain all the necessary information from the client on his knowledge and experience on the specific type of product or service, the financial situation and the investment objectives, in order to be able to recommend the investment services and financial instruments adapted to the client or potential client.</p> <p>Advice on financial instruments in a daily newspaper, journal, magazine or any other publication for the general public (including Internet) or television or radio transmissions is not considered as a personalised recommendation for the definition of investment advice.</p> <p>General advice General advice consists of asset allocation or financial planning activities and is a advice relating to a type of financial instrument. In itself, it is not reserved work but a possible exploitable and preparatory activity for each investment service so it is therefore called to that discipline.</p>	<p>Suitability When the investment company supplies investment advice and portfolio management services, he must obtain all the necessary information from the client on his knowledge and experience of investment, the specific type of product or service, the financial situation and aims of investment in order to be able to recommend the investment services and financial instruments suitable for the client. The information on the aims of investment of a client include data on the period of time for which the client wishes to hold the investment, his preferences on risk, his risk profile and the purpose of the investment. When an investment company which provides an investment advice service on investment is unsuccessful in obtaining information from the client it must refrain from recommending investment services or financial instruments to the client or potential client.</p> <p>Appropriateness When the investment company provides services other than investment advice and portfolio management, it must ask the client for information about his knowledge and experience of investment concerning the specific type of product or service offered or requested in order to decide if the service or product in question is appropriate for him. If the investment company considers that the product or service is inappropriate for the client, it must advise him of the situation. If the client chooses not to give the information or if it is insufficient, the investment company must advise the client that this decision will prevent it from deciding if the service or product is appropriate for him.</p>	<p>Definition The tied agent is a person or legal entity who, under the full and unconditional responsibility of a single investment company on behalf of which he operates, promotes investment and/or ancillary services to clients or potential clients, receives and transmits the instructions or orders of clients concerning investment services or financial instruments, places these and/or gives advice to clients or potential clients in respect of those instruments or services.</p> <p>Member states may allow tied agents registered in their country to administer funds and/or financial instruments of their clients on behalf of and under the full responsibility of the investment company for which they operate in their country or, for cross-border activity, in the country of a member state which allows a tied agent to administer the client's funds. Tied agents must be registered in a public register; only when it has been ascertained that they fulfil the criterion of respectability and have the appropriate general, commercial and professional knowledge to be able to communicate precisely all the information concerning the service offered to the client or potential client. The register is updated regularly. It can be consulted by the public. If an investment company makes use of a tied agent established in a member state other than the member state of origin, that tied agent is equivalent to the branch and is subject to the provisions of the Directive on branches.</p>
<p>MIFID ARTICLES</p>	<p>Recital No 3 L1 Article 1 sub-para. 1.4 L1 Article 19 sub-para. 4 L1 Appendix 1 section A point 5 L1 Recital No 39 L2 Recital No 58 L2 Recital No 79 L2 Recital No 81 L2 Recital No 82 L2 Article 35 sub-para. 2 and 5 L2 Article 52 L2</p>	<p>Article 19 sub-paras 4 and 5 L1 Recital No 56 L2 Article 35 (suitability) Article 36 (appropriateness) Article 37 (common provisions)</p>	<p>Recital No 37 L1 Recital No 39 L1 Article 23 L1 Article 31 c2 b) Art. 32. 2 L1</p>

	Investment advice	Suitability and Appropriateness	Tied agents
Acknowledgement in Italy	<p>The Italian discipline, as expected by MIFID, counts investment advice among the investment services requiring authorisation. 'Investment advice' means, therefore, the provision of personalised recommendations to a client on his request or at the initiative of the person supplying the service concerning one or more operations relating to a certain financial instrument. The recommendation is personalised when it is presented as suitable for the client or is based on the consideration of the client's features. A recommendation is not personalised if it is broadcast to the public through distribution channels.</p> <p>The legislation sets out that the exercise of advice be reserved for investment companies, banks, investment management and harmonised management companies. The tied agent can practise the advice service on behalf of his intermediary.</p> <p>Investment company means Stock Brokerage Firms and Community and extra-Community investment companies, i.e., companies other than banks authorised to carry out investment services or activities. The supervisory authority has provided that the Stock Brokerage Firms must adopt the form of a public limited company and that the paid-up capital must be not less than € 120,000.</p> <p>The Italian legislation has also provided that the investment advice service can be offered by financial advisors (natural person) with the professionalism, respect, independence and capital requirements set out by the Regulation of the Treasury Department of the Ministry of Economics and Finance, not yet definitive, at today's date. Nevertheless, the draft of that regulation establishes that tied agents without a mandate and having the appropriate requirements, can have access to the Professional Roll of Financial Advisors to be set up without having to submit to the assessment test set out for enrolling in it. Financial advisors (natural person) cannot act as brokers intermediary.</p>	<p>The Italian implementation follows the discipline established by MIFID for the assessment of suitability and appropriateness almost passively.</p> <p>Suitability When supplying investment advice or portfolio management services, brokers obtain the necessary information on the knowledge and experience in the investment sector relevant for the type of instrument or service, financial situation and investment aims from the client or potential client, taking account of the client's features, type, complexity and risks of that service, product or operation. Data on the length of time for which the client wishes to hold the investment and its purposes, his risk preferences and his risk profile. When intermediaries do not obtain the information, they must refrain from supplying the services.</p> <p>Appropriateness When intermediaries supply services other than investment advice and portfolio management services, they will ask the client or potential client to supply information about their knowledge and experience in the investment sector relevant for the type of instrument or service offered or requested. In this case, the intermediary will check that the client has the level of experience and knowledge necessary to understand the risks of the instrument or investment service offered or requested. If the broker considers that the instrument or service is inappropriate for the client he will advise him of this. If the client chooses not to give the information or if it is insufficient, the broker will advise the client or potential client that this decision will prevent him from deciding if the service or instrument is appropriate for him.</p>	<p>In delineating the work of the tied agent, the MIFID Directive has taken the Italian law on the "promotori finanziari" as a point of reference. The person (and not legal entity as well, as set out by MIFID) is a tied agent who professionally practises outside the office as an employee or agent as a tied agent. The work of tied agent is only carried out in the interests of a single body. The enabled body which confers the position is jointly and severally liable for the damage caused to third parties by the tied agent, even if that damage is from liability ascertained in a court of law.</p> <p>An indispensable condition for practising the profession is enrolment in a public professional roll, subject to check of the requirements of respectability. The legislator expects that the tied agent must have sufficient general, commercial and professional knowledge to be able to adequately communicate all the information concerning the service offered to the client or potential client. An assessment test must be passed to enter the professional roll. The possibility of direct access by right is only provided for if the necessary competences were acquired in a professional environment. In Italy, tied agents also have the function of spreading economic knowledge referring to personal finance, useful for the investor to be able to make conscious choices. The tied agent cannot receive any form of payment or financing from the client or potential client. The tied agents used by brokers are equivalent to a branch set up in Italy for the purposes of the application of the rules of conduct. As a result, the tied agent can carry out the service of promotion and placement, transmission of orders and, in particular, the investment advice service. In this case, the tied agent's intermediary must identify the area of financial instruments, financial products and services to which the advice is really extended. Where the intermediary's advice service also concerns instruments and products not placed by him, there's no doubt that the tied agent can also make personalised recommendations about these. Lastly, the tied agent can give the client general advice (asset allocation or financial planning) relating to a type of financial instrument, as this is a free activity.</p>
Articles in the Italian discipline	Art. 1 sub-para. 5 (f) and sub-para 5.7 of the TUF Arts. 18 and 18b of the TUF Heading. II Brokers Regulations CONSOB guidelines on investment consultancy	Arts. 39-40-41-42-43-44 of Brokers Regulations	Art. 31 TUF Book VIII Brokers Regulations App. 4 Brokers Regulations
ANASF Comment	ANASF is certainly satisfied with the Italian implementation of the discipline relating to advice services considering that the tied agent will be able to give that service to the client, obviously on behalf of his intermediary. If the latter also gives advice on instruments and products which he doesn't place, the tied agent will also be able to make personalised recommendations about these instruments/products. Lastly, the tied agent will be able to give the client general advice (asset allocation or financial planning) relating to a type of financial instrument as this is a freelance activity. The Association is also monitoring the evolution of the discipline relating to the operativity of financial advisors, still not defined, hoping that the maximum protection of investors is guaranteed.	The rules of suitability and appropriateness introduced by MIFID have confirmed the approach that tied agents have always followed in the relationships with their client and, therefore, further strengthen his professional figure. It is essential that a relationship of trust is set up with the client so that the choice of investment is made consciously and knowledgeably. The collection of information is indispensable in order that the tied agent can have deeper knowledge of the requirements and situation of the client. Brokers have adopted the questionnaires set out by MIFID to make the suitability and appropriateness tests, so that the necessary information to supply the service can be collected. As a result, tied agents must also make the same necessary assessments - suitability test for investment advice and appropriateness for the other services - on behalf of their intermediary before being able to supply the service preselected by the client. It will be essential that compilation of the questionnaire does not become a mechanical means of collecting information, used in an aseptic manner without really making contact with the client. All the old clients had to be re-profiled to be able to continue to offer the services and the signature of the contract.	ANASF is clearly satisfied by the MIFID discipline relating to the work of the tied agent because it has taken up the regulations already set out in Italy for the promotore finanziario. It would have preferred that the Italian implementation made provision for the possibility of the tied agent being a legal entity, as established by MIFID, but this wasn't possible. However, the tied agent is strengthened by the regulations introduced as he can be introduced as a savings professional able to offer his client both services of promotion and placement which the advice service, which acquires increasing importance in the context being delineated, in which the professionalism of the tied agent will have a fundamental role. He will therefore be a complete professional able to follow the client adequately, also through the work of after-sales assistance and continuous monitoring.

	Branches	Inducements	Conflicts of interest
MIFID Description	<p>Definition An office of work other than the head office which is a part of an investment company without legal status which supplies investment services and/or work and which can also supply ancillary services for which the investment company has been authorised; all the offices of an investment company in the same member state which have the head office in another member state are considered as a single branch;</p> <p>If an investment company has a tied agent, established in a member state other than member state of origin, he is compared to a branch and subject to the provisions of the Directive on branches.</p>	<p>Definition Inducements consist of fees, commissions and non-monetary loans which may be paid or received by an investment company in relation to the provision of an investment or ancillary service to a client. Inducements are not generally allowed as it is believed that they lead the investment company to not act in the client's best interests. They are only acceptable in certain circumstances: a) the fees, commissions or non-monetary loans are paid or supplied to or by a client or a person on behalf of the client; b) fees, commissions or non-monetary loans are paid or supplied to or by a third party or a person acting on behalf of a third party, if the following conditions have been fulfilled: i) the existence, type and amount of fees, commissions or services must be clearly advised to the client in a complete, accurate and understandable manner before supply of the investment or ancillary service in question; ii) the payment of fees or commissions or the grant of non-monetary loans must be aimed at improving the quality of service supplied to the client and must not make compliance with the duty to serve the client's best interests by the company more difficult; c) appropriate fees which make the provision of investment services possible or are necessary for that purpose like, for example, custodial costs, settlement and exchange fees, the compulsory charges or legal fees, and which, by their nature, cannot enter into conflict with the duty of the company to act in an honest, fair and professional manner to serve the interests of its clients better.</p>	<p>Definition of the conflict of interest Investment companies must decide whether they, a significant body or a person with a direct or indirect controlling connection with the company is in a situation such that, at the time the investment services and accessories or a combination of them, could damage the interests of a client. In particular if: a) it is likely that the company or that body make a financial gain or avoid a financial loss, at the expense of the client; b) the company or that body have a separate interest from that of the client in the result of the service supplied or the operation made on his behalf; c) the company or that body have a financial or other incentive in privileging the interests of another client or group of clients with respect to those of the client involved; d) the company or that body carry out the same work as the client; e) the company or that body receive or will receive an incentive, in the form of money, goods or services, different from the commission or fee normally invoiced for that service, from a person other than the client in relation to the service supplied to him.</p>
	<p>Member states must ensure that the supply of investment and ancillary services and/or the practise of investment work in their country can be made through the establishment of branches, as long as those services and that work are covered by the authorisation granted to the investment company or credit institute in its member state of origin. Ancillary services can only be supplied with an investment service and/or work. Investment companies which want to establish a branch in the country of another member state must advise the competent authority their member state of origin and supply the following information: a) the member states in whose countries they intend setting up a branch; b) a programme of the work which also indicates the investment services and/or work and also the ancillary services given by the branch and its organisational structure and specifications if it intends to make use of tied agents; c) the address in the host member state at which documents can be requested; d) the names of the people in charge of the management of the branch.</p>		<p>Policy and register of conflicts of interest Investment companies must develop, apply and maintain an effective policy for the management of conflicts of interest which must be formulated in writing and appropriate for the size and organisation of the company and the nature, size and complexity of its work. Companies must also keep and regularly update a register in which the types of investment services, accessories or investment work carried out by the company or on its behalf, from which a conflict of interest has arisen or, for an ongoing service or activity, could arise which risks seriously harming the interest of one or more clients.</p>
MIFID ARTICLES	<p>Recital No 32 L1 Article 32 L1 Article 61</p>	<p>Article 19 para.1 L1 Recital No 39 L2 Recital No 40 L2 Article 26 L2</p>	<p>Recital No. 29 L1 Article 13.3 L1 Article 18 L1 Recital No 3 L2 Recital No 25 L2 Recital No 26 L2 Recital No 27 L2 Article 21 L2 Article 22 L2 Article 23 L2 Article 30 c.1(h)-(i) L2</p>

	Branches	Inducements	Conflicts of interest
Acknowledgement in Italy	<p>The tied agents used by Community and extra-Community investment companies, harmonised management companies and Community and extra-Community banks are equivalent to a branch set up in Italy for the purpose of the application of the rules of conduct.</p>	<p>Italian implementation of the discipline of inducements takes up the provisions of MIFID precisely. The discipline of inducements has had a strong impact in Italy to the extent that CONSOB has intervened on the subject, establishing explanatory guidelines.</p> <p>The provision relating to the inducements a intermediary pays to or receives from third parties (other than the clients to whom the service is given) has aroused particular concern. The provision sets some conditions in order that payments of this type are unacceptable:</p> <ul style="list-style-type: none"> i) incentives must be advised to the client in a complete, accurate and understandable manner before the provision of the service (disclosure). The advise must concern the existence, type and amount of the incentives; ii) the incentive must be aimed at increasing the quality of the service given to the client and must not make compliance of the company with the obligation to best serve the interests of the client more difficult. <p>The information on inducements given to the client must necessarily therefore be before performance of the service and is of the type to be normally supplied in the contract to be signed with the client, although provision of this information may be made in another, separate document. The perception of the distributor (investment dealer/collector of orders), of retroceded commissions of the 'product company' is considered aimed at improving the quality of the service supplied to the client:</p> <ul style="list-style-type: none"> · when the distributor combines his service with investment advice services; · when retrocession allows the client to have access to a wider range of products, with a resulting perspective of open architecture; · when the distributor commits himself to extensive forms of 'assistance', particularly 'after-sales service' with the client. 	<p>Brokers must adopt every reasonable measure to identify conflicts of interest which may arise with the client or between clients and manage them, also by adopting suitable organisational measures so that they do not have a negative effect on the interests of clients in the performance of the investment services and work and ancillary services.</p> <p>They must also clearly inform clients, before acting on their behalf, of the nature and sources of conflicts of interest when the measures adopted are insufficient to reasonably ensure that the risk of harming clients' interests has been avoided.</p> <p>Brokers will write, apply and maintain an effective management policy for conflicts of interest in line with the proportionality law.</p> <p>This policy also takes account of the circumstances connected with the structure and work of bodies belonging to their group of which brokers must or should be aware. Brokers will set up and regularly update a register in which they show the situations in which a conflict of interest which risks seriously damaging the interest of one or more clients arose or, for ongoing services and work, could arise, noting the types of investment or ancillary services or the investment work involved.</p>
Articles in the Italian discipline	Art. 31 TUF	Heading V - Art. 52 Regulation of Brokers CONSOB guidelines	Art. 29 TUF Art. 21 1b. Regulation of Brokers Article 23 Joint CONSOB-Bank of Italy regulation
ANASF Comment	<p>ANASF considers that an indication by the supervising authority clarifying that tied agents are equivalent to a branch only for the purposes of the application of the rules of conduct would be opportune.</p>	<p>ANASF considers, as is specified in the Committee of European Securities Regulators (CESR) document interpreting the discipline of inducements in the MIFID Directive (CESR 05-290b), that commissions and other services provided by the distributor to the tied agent operating on his behalf do not fall within the discipline of inducements but in that of the conflict of interest. The discipline relating to inducements concerns agent services received from or supplied to third parties and, as a result, cannot include in them services received from tied agents who, as agents, fall within the organisational structure of the principal broker. The CESR interpretation has established that the tied agent cannot consider himself a third party with respect to the broker for whom he works.</p> <p>The commissions paid by the drawer to the broker against signature of the relative financial instruments by the investor are to be considered the right reward for the work done in connection with the competence, professionalism and the education function towards the client carried out by the broker. As far as commissions paid in time by the drawer to the broker, it is considered that these can be justified in the continuous assistance given in time to the client through monitoring the investment made, qualified work which involve management of the client's sensitivity, both at times of euphoria and in depression, also through the use of financial behaviour techniques. The work of assisting the client is extremely important in completion of the service given, work which must therefore be adequately remunerated.</p>	<p>It should be highlighted that, unlike other distribution channels, tied agents are businessmen and the interests of their client and his satisfaction in time become indispensable elements, both for the respect of their professional ethics and for their economic growth. A satisfied client will remain so in time and bring other new clients. ANASF has always paid great attention to the subject of conflicts of interest to the extent that it already confirmed the duty for the tied agent to pursue the interests of the client, refraining from conduct in contrast with these objectives, in its Professional Ethics Code, published in 1988. These concepts were then restated in the Charter of Savers' Rights in which it is stated that ANASF will support positions inspired by the interests and rights of the saver, in addition to its own, in comparison and dialogue with its institutional and professional contacts, in the conviction that there is no conflict between the two.</p>