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Investment Services or Activities

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3.1 Introduction. Investment services and activities: definition

On 1 November 2007, the Legislative Decree issued the 17 September 2007 no. 164 entered into force, implementing MiFID in Italy. On the regulatory side, in compliance with the legislation that has implemented MiFID, the Commissione Nazionale per le Società e la Borsa (the Consob) and the Bank of Italy issued (inter alia) the following main regulations:

- Resolution no. 16190 issued by the Consob on 29 October 2007, which amended the rules on intermediaries;
- Resolution no. 16191 issued by the Consob on 29 October 2007, which amended the rules on markets; and
- Resolution issued jointly by the Consob and the Bank of Italy on 29 October 2007, which provides for the rules concerning the organization and the procedures applicable to intermediaries authorised to provide investment services and collective portfolio management.

According to the provision of Art. 1, para. 5, of the Legislative Decree no. 58/1998 (as amended by the Legislative Decree no. 164/2007), “investment services and activities” mean the following activities where they concern financial instruments:

a) dealing for own account;
b) execution of orders for clients;
c) subscription and/or placement with firm commitment underwriting or standby commitments to issuers;
c-bis) placement without firm or standby commitment to issuers;
d) portfolio management;
e) reception and transmission of orders;
f) investment advice;
g) management of multilateral trading systems. Art. 1, para. 6, of the Legislative Decree no. 58/1998 also provides a list of “non-core services”, which are ancillary services provided by banks/financial intermediaries jointly with investment services and activities. Such services are:
a) safekeeping and administration of financial instruments and related services;
b) safe custody services;
c) lending to investors to enable them to carry out transactions in financial instruments where the lender is involved in the transaction;
d) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
e) services related to the issue or placement of financial instruments, including the organisation and constitution of underwriting and placement syndicates;
f) investment research and financial analysis or other forms of general recommendation regarding transactions on financial instruments;
g) foreign exchange trading where this is connected with the provision of investment services;
g-bis) activities and services identified by regulation by the Minister for the Economy and Finance, after consulting the Bank of Italy and the Consob, and relating to the provision of investment or accessory services on derivatives.2

It has to be noted that MiFID increased the number of investment services and activities and of financial instruments, including the following main changes:

• investment advice, which was previously a non-core service, has become one of the investment services and activities;
• the operation of a multilateral trading facility has become one of the investment services and activities;
• the provision of investment research and financial analysis has become an ancillary service;
• commodity, weather and all credit derivatives are now financial instruments.