

∴ Rome, 11 July 2012

∴ **May Accepted Market Practices
Amount to Market Manipulation
under REMIT?**

Avv. Lorenzo Parola

GRIMALDI ∴ STUDIO
LEGALE

∴ Milano Roma Bruxelles

Definition of Market Manipulation and Attempt to Manipulate the Market under REMIT/1

❖ Art. 2(2)

- (a)(i) False or misleading orders/transactions (*aggiotaggio operativo*)
- (a)(ii) Price positioning
- (a)(iii) Fictitious device or deception
- (b) Dissemination of false or misleading information (*aggiotaggio informativo*)

❖ Art. 2(3)

- The "intention" element is pivotal for defining the attempt

Definition of Market Manipulation and Attempt to Manipulate the Market under REMIT/2

- ❖ Example based approach as opposed to statement of general principles (Recitals (13) and (14), Chapters 3 and 4 of 1st Edition of ACER Guidelines)
- ❖ Room remains for interpretation uncertainties
 - Actions not covered by examples
 - Signals rather than evidence
- ❖ Need for a "safe harbour" definition

Accepted Market Practices (AMPs)

- ❖ Relevance limited to price positioning (Art. 2(2) (ii) REMIT vs Art. 1(2) MAD and Art. 187-*ter* of the Italian Finance Act-TUF)
- ❖ Lack of a definition but mere reference to Article 1(5) of MAD (Recital (14))
- ❖ Financial regulations (both at EU and Italian level) have provided greater guidance on AMPs
 - Commission's "level 2" guidance in Directive 2004/72 lists factors to be taken into account when considering whether an action constitutes an AMP
 - CESR's first set of "level 3" guidance (Art. 4.12) lists examples of practices that do not constitute AMPs
 - Consob adopted the same approach (e.g. liquidity enhancement)

Reporting Obligations of Persons Professionally Arranging Transactions

❖ Art. 15

- Italian translation inaccuracy
- Compliance hurdles
- Possible liability risks (but professional secrecy (Recital (30) and Article (17))
- Synergies with centralised data collection platform (Artt. 8(3) and 8(4))

Way Forward

- ❖ Expected NRAs' guidance (Art. 13 (1))
- ❖ Fine-tuning of definitions by the Commission (Art. 6)
- ❖ 2nd Edition of ACER guidelines (Art. 16(1))

lparola@grimaldilex.com

GRIMALDI STUDIO
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⋮ Milano Roma Bruxelles