Abstract

The aim of this thesis is to analyze conflict of interest which is connected to investment services as well as its current and upcoming regulation. The reason for that is quite obvious – there simply is a lot of going on within financial market and its regulation right now. This particular issue might seem to be theoretical and technical, though the consequences are crucial for practice in today’s sophisticated, global and complex financial market that is under pressure from the public and politicians.

The thesis is composed of six chapters, each of them dealing with different sorts of regulation of conflict of interest, except for Chapter One that is introductory, defines basic terminology used in the thesis and its purpose as well as points out basic questions that are answered in conclusion. First question is whether or not regulate conflict of interest. If so, what is the direction that should be followed by legislators – prevention, management of conflict of interest etc.? And is current regulation of conflict of interest sufficient and effective? And in that regard is it correct to differentiate more between retail and professional investors? I present answers based on my deep and precise research.

Chapter Two describes conflicts of interest in general and then particularly in the area of investment services due to the fact that conflict of interest within investment services has certain specifics that needs to be described and remembered.

Chapter Three analyzes relevant European legislation. The chapter consists of three parts. Part One focuses on historical progress and former ISD. Part Two provides analysis and recommendations regarding duties imposed upon investment services providers by MiFID. Part Three mentions other European initiatives that will have impact on conflict of interest. Nevertheless, the main focus in this chapter is on analysis of MiFID and its implementing Directive and CESR’s Technical Advice.

Chapter Four is subdivided into two parts and provides an outline of relevant Czech regulation, supervisory practice of the Czech National Bank as well as relevant case law. Part One illustrates the approach of Czech civil law towards conflict of interest and due care of an agent. Part Two looks at direct regulation of conflict of interest and investment services; therefore focuses on the Capital Market Undertaking Act and supervisory practice of the Czech National Bank.
Chapter Five concentrates on distinctions in regulatory approach of MiFID and Capital Market Undertaking Act in relation to a type of an investor. Part One describes whether and how differ duties that an investment services providers have when dealing with retail and professional investors. Part Two recommends changes to be made in legislation so as to ensure more contract freedom for professional investors.

Conclusions are drawn in Six. The main goal of the thesis is to prove that conflicts of interest are worth to regulate even though I do not support current attitude of more and more regulation that, in my humble opinion, has to change. I suggest professional investors be given more space to breathe and actually negotiate contracting terms which meet their specific needs. Further I am of the opinion that conflict of interest cannot be avoided so therefore the main attention should be drawn to managing such situations through disclosure and transparency. And finally I find current legislation sufficient and oppose stricter and overwhelming regulation that is about to come.